

City of Kelowna
Regular Council Meeting
AGENDA



Monday, May 27, 2013
2:00 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. Call to Order

This meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

5 - 11

Regular PM Meeting - May 13, 2013

3. Public in Attendance

3.1 Luby Pow, CEO, Southern Interior Development Initiatives Trust, re:
Presentation to Kelowna City Council

12 - 27

To provide Council with information regarding the Southern Interior Development Initiatives Trust.

4. Unfinished Business

4.1 Agricultural Land Reserve Appeal Application No. A13-0004 - Supplemental
Report, 982 Old Vernon Road, Manraj and Jeetender Kandola

28 - 31

To consider a staff recommendation **NOT** to support a request from the applicant for permission from the Agricultural Land Commission to exclude approximately 4.04 ha (9.99 ac) from the Agricultural Land Reserve. If successful in excluding the property, the owners are proposing to rezone the subject property to an industrial use. An application to exclude the subject property was considered by Council on April 22, 2013. Council deferred consideration and directed staff to work with the Applicants and the Agricultural Land Commission in order to determine viable options for keeping

the subject property within the Agricultural Land Reserve and report back to Council. This supplemental report provides details with respect to discussions with the applicant and ALC staff and recommends forwarding the application as is.

Mayor to invite the Applicants, or Applicants' Representative, to come forward.

5. Development Application Reports & Related Bylaws

5.1 Rezoning Application No. Z12-0062 - 2190 Cooper Road, Brian and Linda Pahl 32 - 58

To consider a staff recommendation **NOT** to rezone the subject property from the A1 - Agriculture 1 zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone to allow for agri-tourist accommodation which would facilitate the development and operation of ten (10) recreational vehicle sites on the subject property.

Mayor to invite the Applicants, or Applicants' Representative, to come forward.

5.2 Rezoning Application No. Z13-0011 - 370 Fleming Road, Wendy Cullen & Michael Anderson 59 - 71

To rezone the subject property from the RU1 - Large Lot Housing zone to the RU1c - Large Lot Housing with carriage house zone to allow the legalization of a carriage house.

5.2.1 Bylaw No. 10849 (Z13-0011) - 370 Fleming Road, Wendy Cullen & Michael Anderson 72 - 72

To give Bylaw No. 10849 first reading.

5.3 Agricultural Land Reserve Appeal Application No. A13-0008 - 3690 Berard Road and 1640 Ward Road, Ronald, James and Wilma McMillan 73 - 106

To obtain a Council recommendation on a proposal to operate two non-farm uses in the Agricultural Land Reserve (ALR). Specifically, the applicant is seeking non-farm uses with respect to an activity referred to as Farmersgolf™ and a concession stand for visitors to the farm.

5.4 Rezoning Application No. Z10-0013, Extension Request - 546 McWilliams Road, Terry Oxley 107 - 109

To extend the date for adoption of the Zone Amending Bylaw from May 18, 2012 to May 18, 2013 and to further extend the date for adoption of the Zone Amending Bylaw from May 18, 2013 to May 14, 2014.

6. Bylaws for Adoption (Development Related)

- 6.1 Bylaw No. 10783 (Z12-0059) - 250 and 260 Lake Avenue, Marianne Hill** 110 - 111

To consider adoption of Bylaw No. 10783, being Z12-0059 Marianne Hill (Ed Guy) - 250 and 260 Lake Avenue in order to rezone from RU1 - Large Lot Housing zone to the RU3 - Small Lot Housing zone.

- 6.2 Bylaw No. 10804 (TA12-0012) - Amendment to City of Kelowna Zoning Bylaw No. 8000, Care Centre Text Amendments, City of Kelowna** 112 - 117

To consider adoption of Bylaw No. 10804, being TA12-0012 in order to update the Zoning Bylaw.

7. Non-Development Reports & Related Bylaws

- 7.1 Development Application Process Review - Final Report and Recommendations** 118 - 178

To inform Council of the review undertaken by staff to identify opportunities to improve the City's development process and to receive Council's endorsement of the report and associated recommendations.

- 7.2 Ellis Street Truck Route** 179 - 183

The purpose of this report is to provide Council with information related to discussions with BC Ministry of Transportation and Infrastructure (MoTI) staff regarding potential upgrades to the intersection of Harvey Avenue (Highway 97) and Gordon Drive to accommodate closure of Ellis Street to heavy truck traffic; to report back on input from affected businesses, residents, and stakeholders; and to provide a recommendation to Council regarding the potential closure of the Ellis Street truck route.

- 7.3 Transit 2013/2014 Annual Operating Agreements** 184 - 190

To provide Council with information on Transit costs for the current year and receive Council authorization to sign the Annual Operating Agreements for the current year along with the amended agreement for last year.

- 7.4 License of Occupation – City of Kelowna to Callahan Construction Company Ltd. and 3720 Investments Ltd. (Mission Park Shopping Centre) 191 - 201

To provide a License of Occupation for a bus shelter that furthers the development of the RapidBus service.

- 7.5 Concession and Vendor Bid Awards 202 - 334

To obtain Council endorsement to award activity and food concessions and a mobile vending contract to operate concessions at City Park, Ben Lee Park, Waterfront Park and Queensway Street.

- 7.6 Commercial Lease – Duncan's Bistro & Bar Ltd., 375 Lawrence Avenue (Chapman Parkade) 335 - 373

That Council approve the Lease to Duncan's Bistro & Bar Ltd.

- 7.7 Corporate GHG Emissions Update 374 - 383

Purpose of report is to present the latest corporate GHG emissions data and highlight GHG emissions reduction projects. The community actions were highlighted in a separate Council report on Feb 12, 2013 (Climate Action Revenue Incentive Program Reporting Requirement).

8. Bylaws for Adoption (Non-Development Related)

- 8.1 Bylaw No. 10848 - Road Closure Bylaw, A Portion of Road that bisects 2018 Cross Road 384 - 386

To consider adoption of Bylaw No. 10848 being Road Closure and Removal of Highway Dedication - A Portion of Road that bisects 2018 Cross Road.

Mayor to invite anyone in the public gallery who deems themselves affected by the proposed Road Closure to come forward.

9. Mayor and Councillor Items

10. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, May 13, 2013
Location: Council Chamber
City Hall, 1435 Water Street

Council Members Present: Mayor Walter Gray and Councillors Colin Basran, Andre Blaneil, Maxine DeHart, Gail Given, Robert Hobson, Mohini Singh*, Luke Stack and Gerry Zimmermann.

Staff Present: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Manager, Real Estate Services, Jordan Hettinga*; Manager, Urban Land Use, Danielle Noble*; Manager, Capital Assets & Investment, Joel Shaw*; Manager, Systems & Reporting, Jackie Dueck*; Manager, Cultural Services, Sandra Kochan*; Financial Analyst, Jim Wunderlich*; Manager, Utilities Planning, Andrew Reeder*; Council Recording Secretary, Sandi Horning

(* denotes partial attendance)

1. Call to Order

Mayor Gray called the meeting to order at 1:31 p.m.

Mayor Gray advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

Moved By: Councillor Singh/Seconded By: Councillor Hobson

R346/13/05/13 THAT the Minutes of the 2013 Budget Deliberations of December 13, 2012 and the Regular PM Meeting of May 6, 2013 be confirmed as circulated.

Carried

3. Committee Reports

3.1. Financial Statements for the Year Ending December 31, 2012

Mayor Gray:

- Introduced the Report on behalf of the Audit Committee.

Staff:

- Provided an overview of the Financial Statements.

Moved By: Councillor Hobson/Seconded By: Councillor Given

R347/13/05/13 THAT Council receives, for information, the Report from the Audit Committee dated May 7, 2013 with respect to the Consolidated Financial Statements and Auditor's Report for the City of Kelowna for the year ending December 31, 2012;

AND THAT Council approves the appropriation of \$1,985,000 of surplus generated from all general fund operations in 2012 to general reserves as detailed in the Report from the Audit Committee dated May 7, 2013;

AND FURTHER THAT the Consolidated Financial Statements and Auditor's Report be reprinted in and form part of the City of Kelowna's annual report.

Carried

4. Development Application Reports & Related Bylaws

4.1. Rezoning Application No. Z12-0064 - Parminder & Kulwant Hans and Gurdev & Kamalpreet Gill, 275 Petch Road

Moved By: Councillor Hobson/Seconded By: Councillor Blanleil

R348/13/05/13 THAT Rezoning Application No. Z12-0064 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 40, Section 23, Township 26, ODYD Plan 18008 located on 275 Petch Road, Kelowna, BC from the RU1- Large Lot Housing zone to the RU6 - Two Dwelling Housing zone, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch and the Rutland Water Works being completed to their satisfaction.

Carried

4.1.1. Bylaw No. 10847 (Z12-0064) - Parminder & Kulwant Hans and Gurdev & Kamalpreet Gill, 275 Petch Road

Moved By: Councillor Basran/Seconded By: Councillor Blanleil

R349/13/05/13 THAT Bylaw No. 10847 be read a first time.

Carried

5. Non-Development Reports & Related Bylaws

5.1. 2013 Professional Arts Operating Grant - Ballet Kelowna

Laurie Larson, Director, and Joan Wilson, Director, Board of Directors of the Kelowna Ballet Society:

- Responded to questions from Council regarding the operations of Ballet Kelowna.

Moved By: Councillor Hobson/Seconded By: Councillor DeHart

R350/13/05/13 THAT Council receives, for information, the Report from the Manager, Cultural Services dated May 8, 2013 with respect to the 2013 Professional Arts Operating Grant to Ballet Kelowna;

AND THAT Council approves a 2013 Professional Arts Operating Grant of \$30,000.00 for Ballet Kelowna as recommended in the Report from the Manager, Cultural Services dated May 8, 2013.

Carried

5.2. 2013-2014 ArtsVest Program Update

Staff:

- Displayed a PowerPoint Presentation and responded to questions from Council.

Moved By: Councillor Stack/Seconded By: Councillor Hobson

R351/13/05/13 THAT Council receives, for information, the Report from the Manager, Cultural Services dated May 8, 2013 with respect to the 2013-2014 ArtsVest Program.

Carried

5.3. 2013-2020 Capital Plan

Staff:

- Displayed a PowerPoint Presentation and responded to questions from Council.

Moved By: Councillor Hobson/Seconded By: Councillor Basran

R352/13/05/13 THAT Council endorses the 2020 Capital Plan dated May 8th, 2013;

AND THAT the 2020 Capital Plan, along with the known operating impacts, be incorporated into future 5 Year Financial Plan Bylaws.

Carried

5.4. Mill Creek Diversion Grant Application

Staff:

- Provided an overview of the infrastructure grant application process.
- Responded to questions from Council.

Moved By: Councillor Zimmermann/Seconded By: Councillor Given

R353/13/05/13 THAT Council endorses, by resolution, the application to the "Expression of Interest Questionnaire Flood Protection Program Intake 2013", as attached to the Report from the Manager, Utilities Planning dated May 5, 2013, in the amount of \$35,000.00 towards a flood protection grant for Mill Creek;

AND THAT, if the grant application is successful, Council directs that the City portion of the Flood Protection Program grant be funded from the Downstream Storm Drain reserve.

Carried

5.5. Proposed Closure of Portion of former Glenmore Road Bypass

City Clerk:

- Provided an overview of the proposed road closure.

Council:

- Inquired what the land will be used for once the road has been closed.

City Clerk:

- Believes that the land will be used for road improvements in the area, however, he will request that the appropriate staff provide Council with the details.

Councillor Stack declared a perceived conflict of interest as the Society he is a Director of as an interest in land that is near the subject property and left the meeting at 2:47 p.m.

Moved By: Councillor Hobson/Seconded By: Councillor Given

R354/13/05/13 THAT Council receives, for information, the Report from the Manager, Real Estate Services dated May 8, 2013, recommending that Council adopt the proposed road closure of a portion of road that bisects 2018 Cross Road (Schedule 'A');

AND THAT Bylaw No. 10848, being proposed road closure of a portion of road that bisects 2018 Cross Road, be given reading consideration.

Carried

5.5.1. Bylaw No. 10848 - Road Closure Bylaw - Portion of Road that bisects 2018 Cross Road

Moved By: Councillor Blaneil/Seconded By: Councillor Basran

R355/13/05/13 THAT Bylaw No. 10848 be read a first, second and third time.

Carried

6. Resolutions

6.1. Draft Resolution, May 27, 2013 Afternoon Council Meeting - Start Time

Councillor Stack rejoined the meeting at 2:49 p.m.

Moved By: Councillor Hobson/Seconded By: Councillor DeHart

R356/13/05/13 THAT the Monday, May 27, 2013 afternoon Council Meeting be scheduled to begin at 2:00 p.m.

Carried

7. Bylaws for Adoption (Non-Development Related)

7.1. Bylaw No. 10836 - Road Closure and Removal of Highway Dedication - A Portion of Sutherland Avenue

Mayor Gray invited anyone in the public gallery who deems themselves affected by the proposed road closure to come forward. No one came forward.

Moved By: Councillor Singh/Seconded By: Councillor Hobson

R357/13/05/13 THAT Bylaw No. 10836, being Road Closure and Removal of Highway Dedication - A Portion of Sutherland Avenue, be adopted.

Carried

7.2. Bylaw No. 10846 - Amendment No. 1 to Development Cost Charge Reserve Fund Expenditure Bylaw, 2012, No. 10691

Moved By: Councillor Singh/Seconded By: Councillor Hobson

R358/13/05/13 THAT Bylaw No. 10846 be adopted.

Carried

7.3. Bylaw No. 10826 - Five Year Financial Plan 2013-2017

Moved By: Councillor Zimmermann/Seconded By: Councillor DeHart

R359/13/05/13 THAT Bylaw No. 10826 be adopted.

Carried

7.4. Bylaw No. 10827 - Tax Structure Bylaw, 2013

Moved By: Councillor Zimmermann/Seconded By: Councillor DeHart

R360/13/05/13 THAT Bylaw No. 10827 be adopted.

Carried

7.5. Bylaw No. 10828 - Annual Tax Rates Bylaw, 2013

Moved By: Councillor DeHart/Seconded By: Councillor Zimmermann

R361/13/05/13 THAT Bylaw No. 10828 be adopted.

Carried

7.6. Bylaw No. 10829 - Development Cost Charge Reserve Fund Expenditure Bylaw, 2013

Moved By: Councillor Given/Seconded By: Councillor Stack

R362/13/05/13 THAT Bylaw No. 10829 be adopted.

Carried

7.7. Bylaw No. 10831 - Sale of City-Owned Land Reserve Fund Expenditure Bylaw, 2013

Moved By: Councillor Stack/Seconded By: Councillor Given

R363/13/05/13 THAT Bylaw No. 10831 be adopted.

Carried

8. Mayor and Councillor Items

Councillor Stack:

- Commented on his attendance at the Glenmore Footprint Days and complimented the organizers of the event.
- Commented on his attendance at "Push to End Homelessness" event over the weekend.

Councillor Zimmermann:

- Commented on his attendance at the Legion's Flag Raising Day.
- Reminded everyone that the 'Rutland May Days' event will be held over the May Long Weekend.

Councillor DeHart:

- Thanked the City's Communications Department for providing her with speaking notes for the Mother's Day Tour.

Councillor Basran:

- Reminded everyone to get out and vote in tomorrow's Provincial election.

5.5. Proposed Closure of Portion of former Glenmore Road Bypass

Mayor Gray noted that staff was in attendance to answer Council's inquiry regarding what the land will be used for once the road has been closed.

Staff:


- Advised that once the road is closed, it will be consolidated with the parent parcel, and a portion of the consolidated parent parcel will be used for upgrades to the road network. The remaining portion of the consolidated parent parcel may be consolidated with another parcel for future development potential.

9. Termination

This meeting was declared terminated at 2:59 p.m.

Mayor

/slh

_____
City Clerk

DRAFT

Southern Interior

DEVELOPMENT INITIATIVE TRUST

City of Kelowna Counsel
May, 2013

History

- *Created by an Act of Legislation (Bill 8 - 2005)
February 27, 2006*
- *Set up as a Corporation, independent of
government*
- *One time \$50 million allocation from the
Province*
- *Commenced operations October, 2006*

Board of Directors

Columbia Kootenay Directors:

Gord DeRosa – Councillor Trail (RDKB); Mayor Karen Hamling –Nakusp (RDCK)
Grace McGregor – Director Area B (RDKB); Mayor Ron McRae – Kimberly (RDEK)

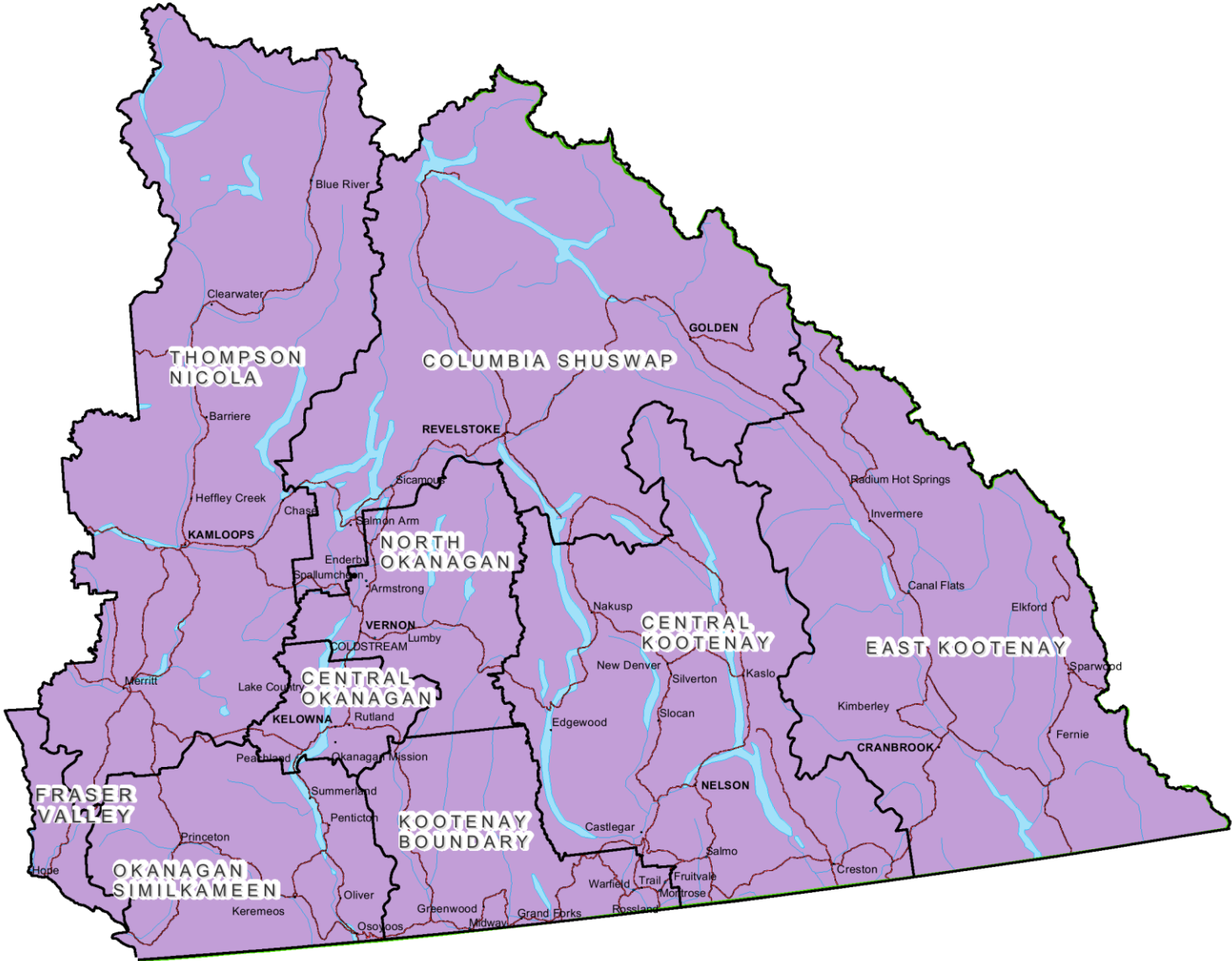
Thompson Okanagan Directors

Mayor Doug Findlater – West Kelowna; Mayor Stu Wells – Osoyoos
Mayor Al Raine – Sun Peaks Mountain Resort; (one position vacant)

Appointed Directors:

John Zimmer, Cranbrook; Keith Mathew, Barrier; Claudette Everitt, Vernon,
Philip Jones, Cranbrook; (one position vacant)

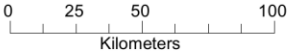
Southern Interior Development Initiative Trust



Ministry of Agriculture and Lands
Integrated Land
Management Bureau
Corporate Information Services

Legend

Development Regions
 Southern Interior Development Initiative Trust

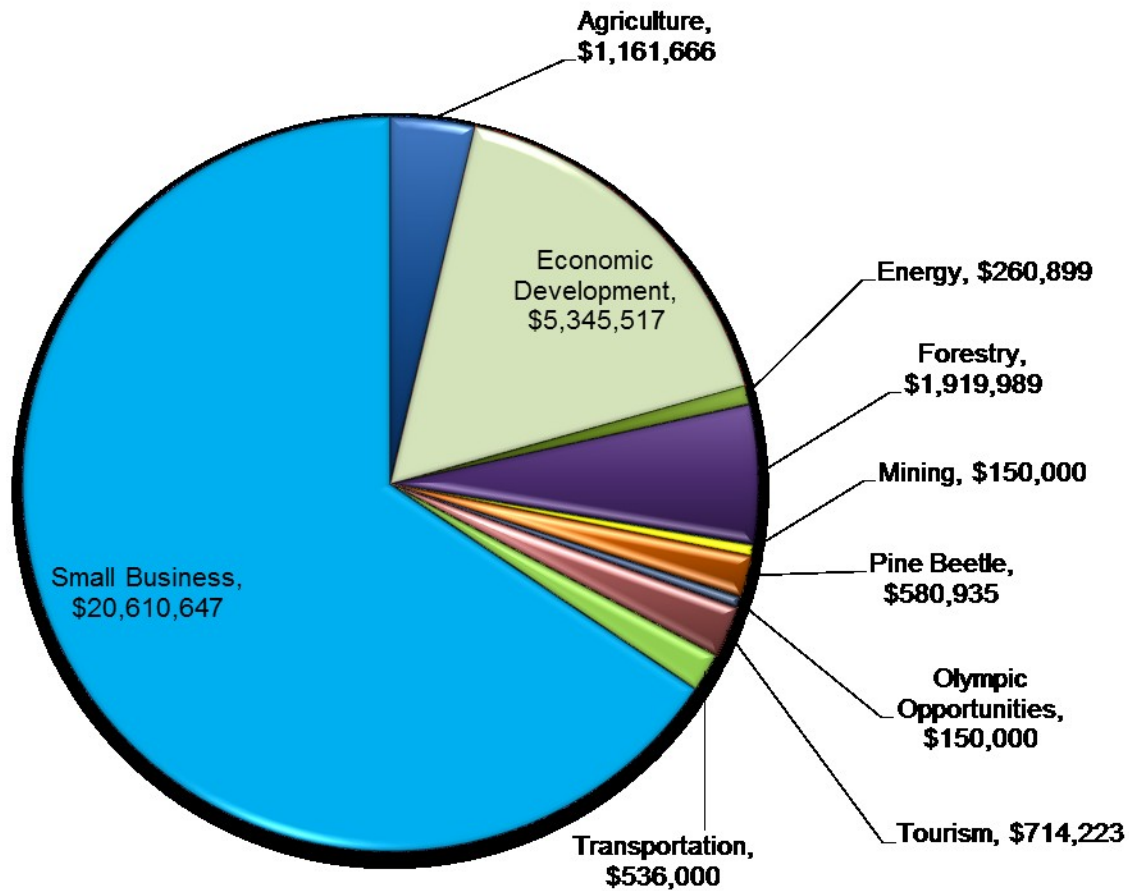


Prepared for:
Ministry of
Economic Development
Thompson Okanagan Region

Mandated Investment Sectors:

- Agriculture
- Economic development
- Energy
- Forestry
- Mining
- Tourism
- Olympic opportunities
- Pine Beetle recovery
- Small Business
- Transportation

Cumulative Investment by Sector



Mission

The mission of the Southern Interior Development Initiative Trust is to support regionally strategic investments in economic development projects that will have long-lasting and measurable regional benefits for the Southern Interior.



Strategic Goals

- ▶ Enhance the resiliency of the Southern Interior economy by promoting greater economic diversification.
- ▶ Preserve existing jobs and stimulate new employment in the Southern Interior region.
- ▶ Attract new capital to the Southern Interior region to drive incremental economic development activities.
- ▶ Increase the value of the investment pool, thereby increasing opportunities to support regionally strategic investments in the Southern Interior.

Results

- SIDIT's funding has to date created or preserved or will create 1,895 short and long term jobs (proj over 3-5 years).
- Over the past six years, SIDIT has funded over \$33.2 mil-lion in development initiatives, grants and education awards. Based on total cumulative initiative values of \$130.2 million, \$97 million has been invested by proponents and other funders.
- 5,298 students have received education support by way of bursaries and scholarships.
- Net current asset value \$49.9 million.

Grant Funding

- *Municipalities, Regional Districts, First Nations, Registered not-for-profit societies, Industry associations or co-ops eligible for grant funding.*
- *Project must aligned with SIDIT's mandate, create new economic activity, demonstrate sustainable revenue generation and create jobs.*
- *A viable business plan that includes financial statements, profitability projections and quotes supporting the project budget.*
- *Project provides broad regional economic impact.*
- *Continuous intake until funds fully allocated.*

Loan / Equity Investment

- *Business activities that support sustainable regional employment, growth and diversification.*
- *Must have a viable business plan and meet leverage criteria.*
- *Funding for commercializing proprietary technology, expanding operations, competing in new markets, implementing turnaround or succession plans.*
- *Funding applications are continuously accepted.*
- *Terms typical of those offered by Banks and Investment firms and interest rate is risk based.*

Success Stories

Vineyard Networks Inc.

- *Provides network monitoring software to enable IT departments to determine how internet bandwidth is being used and prioritize business traffic over recreational traffic*
- *SIDIT investment in 2009 allowed company to grow from 6 employees to 34.*
- *Unsolicited \$28 million sale Jan 2013 provided 14.5X return on shareholder investment.*
- *Purchaser, Procera Networks Inc plans to create a NA development centre in Kelowna and increase employees to 50.*

QHR Technologies Inc. (QHR)

- *Specializing in software designed to improve the efficiency of professionals in healthcare and other markets through an integrated Human Resource Information System (HRIS) and an Electronic Medical Records (EMR) solution.*
- *SIDIT funding in 2009 allowed the company to grow from 80 employees to 100 and increased sales from \$6.5 million to \$13.8 million in one year.*
- *Quarterly revenues now > \$7M (60% recurring).*
- *Named one of BC's top employers in 2013.*

Accelerate Okanagan

- *Mission is to increase the number of technology companies that start and grow in the Okanagan*
- *Offers programs that support entrepreneurs and technology companies looking to start, accelerate and grow.*
- *110 early stage companies have been supported.*
- *28 companies are currently being mentored.*
- *170 jobs created.*
- *Helped raised \$3.5 million private equity/government funding.*
- *Vineyard Networks Inc. one of original start-ups.*

Contact Information:

Web Site: www.sidit-bc.ca

Email: admin@sidit-bc.ca
ceo@sidit-bc.ca

Phone: (250) 545-6829

Fax: (250) 545-6896

Southern Interior
DEVELOPMENT INITIATIVE TRUST



REPORT TO COUNCIL



Date: May 10, 2013

RIM No. 1210-21

To: City Manager

From: Land Use Management, Community Sustainability (GS)

Application: A13-0004 **Owner:** Manraj Kandola
Jeetender Kandola

Address: 982 Old Vernon Road **Applicant:** Manraj Kandola
Jeetender Kandola

Subject: Agricultural Land Reserve (ALR) exclusion - Supplemental Report.

Existing OCP Designation: Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve appeal A13-0004 for Lot 3, Section 1, Township 23 Osoyoos Division Yale District, Plan 546, located at 982 Old Vernon Road for exclusion of land in the ALR under Section 30(1) of the Agricultural Land Commission Act, NOT be supported by Municipal Council.

AND THAT Council forward the subject application to the Agricultural Land Commission.

2.0 Purpose

An application to exclude the subject property was considered by Council on April 22, 2013. Council deferred consideration and directed staff to work with the Applicants and the Agricultural Land Commission in order to determine viable options for keeping the subject property within the Agricultural Land Reserve and report back to Council.

This supplemental report provides details with respect to discussions with the applicant and ALC staff and recommends forwarding the application as is.

3.0 Land Use Management

As background, City staff provided a report dated April 5, 2013 which recommended that Council not support the request for exclusion from the Agricultural Land Reserve and that Council forward the application to the Agricultural Land Commission for exclusion. After significant contemplation, Council voted in favour of deferring consideration of the application and asking City staff to discuss opportunities with ALC staff and the applicant/owners.

Following the Council meeting, City staff advised the applicants to consider non-farm use concepts that ALC and City staff could consider for appropriateness. The applicants later advised that they met with the owner of Lot 2 (the former Russo mill site since inception) to determine if there was an opportunity for the two owners to work together toward a common goal. Staff understand that the owner of Lot 2 is interested in a very limited range of non-farm uses (e.g. medium to heavy industrial use for a recycling plant). This narrow range does not offer a great deal of latitude or hope that a positive result can be facilitated on Lot 2.

The applicants (owners of Lot 3) have however stated their openness to alternatives to exclusion. As a result, it is likely that a solution, if available, will only apply to Lot 3. To date, the applicants identified subdivision of the land for residential lots. As this scenario would leave no real opportunity for agriculture and would have a similar precedent setting nature to the proposed transitional industrial use of the property, City staff view this proposal similar to the exclusion and are unable to support it.

ALC Discussions

City staff initiated discussions with ALC staff following the Council direction. No in person discussions or site visit have taken place due to ALC staff being located in Burnaby, rather phone and email discussion were relied on.

As a result of dialogue, ALC staff has outlined their preferred approach to facilitating this file (see attached letter). As a summary, Commission staff advise that their preferable approach “is for the City to forward the ALC exclusion application to the Agricultural Land Commission” at this time.

ALC staff note that ALC legislation provides the Commission the flexibility when considering the exclusion to retain the land in the ALR while permitting a specific non-farm use or subdivision. An example of this was the City’s own file for the Glenmore Recreation Park where the City requested ALR exclusion, but the Commission granted a non-farm use.

Of additional importance is that regulations require that “exclusion applications be forwarded from the local government within 60 days of receipt of the application”. ALC staff feel that “the Commission can appropriately undertake discussions with the applicant about potential suitable land uses”. ALC staff advise that this approach is preferable to working with the applicant while the application is on hold with the City as the file can be placed in their queue sooner rather than later.

While staff recognize that the result is not what Council intended by placing the file on hold as the relevant parties considered alternatives, it appears that advancing the file to the ALC is the best solution available at this time.

4.0 Application Chronology

Date of Application Received:	February 6, 2013
Agricultural Advisory Committee:	March 7, 2013
Council Consideration (Application Deferred):	April 22, 2013

Report prepared by:

Greg Sauer, Environment & Land Use Planner

Reviewed by:



Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion



D. Gilchrist, Acting General Manager, Community
Sustainability

Attachments:

ALC Letter - May 8, 2013



Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

May 8, 2013

Reply to the attention of Martin Collins
Our file: 19519

Greg Sauer
City of Kelowna
1435 Water St
Kelowna, B.C.
V1Y 1J4

Dear Sir

Re: Proposed Exclusion of 982 Old Vernon Road (Kandola) from the Agricultural Land Reserve

Thank you for your May 7, 2013 e-mail which provided information about an Agricultural Land Commission exclusion application for 982 Old Vernon Road that has been submitted to the City of Kelowna. You indicate that the City of Kelowna Council has deferred consideration of the application and directed staff to work with the applicants and the Agricultural Land Commission (ALC) to determine viable options for keeping the subject property in the Agricultural Land Reserve (ALR). You have also provided other information about discussions that occurred between the applicants and the adjoining landowner (McColman) whose property is similarly debilitated.

This is to advise that the Commission's preferable approach to ascertaining a future land use for the subject property is for the City to forward the ALC exclusion application to the Agricultural Land Commission. Section 30(2) of the *ALC Act* permits the Commission the flexibility, when reviewing exclusion applications, to retain the land in the ALR while permitting a specific non-farm use or subdivision. In addition, Section 21 of BC Regulation #171/2002 requires that exclusion applications be forwarded from the local government within 60 days of receipt of the application. With the application before it, the Commission can appropriately undertake discussions with the applicant about potential suitable land uses. The Commission finds this approach preferable to working with the applicant while the application is held in abeyance, because there is potential for delay (frustrating the landowner and inconsistent with the regulation), and because the appropriate statutory process to discuss land use in the ALR is through the application process.

If you have any questions about the above advice, please contact Martin Collins at 604-660-7021.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Martin Collins, Regional Planner

REPORT TO COUNCIL



Date: May 13, 2013

RIM No. 1250-30

To: City Manager

From: Land Use Management, Community Sustainability (GS)

Application: Z12-0062

Owner: Brian Pahl
Linda Pahl

Address: 2190 Cooper Road

Applicant: Brian Pahl
Linda Pahl

Subject: Rezoning Application - Agri-tourist Accommodation

Existing OCP Designation: Resource Protection Area (REP)

Existing Zone: A1 - Agriculture

Proposed Zone: A1t - Agriculture 1 with Agri-tourist Accommodation

1.0 Recommendation

THAT Rezoning Application No. Z12-0062 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, District Lot 128, ODYD Plan KAP80629 located at 2190 Cooper Road, Kelowna, BC from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone NOT be considered by Council.

2.0 Purpose

To consider a staff recommendation NOT to rezone the subject property from the A1 - Agriculture 1 zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone to allow for agri-tourist accommodation which would facilitate the development and operation of ten (10) recreational vehicle sites on the subject property.

3.0 Land Use Management

Agri-tourist accommodation is a “permitted use” in the Agricultural Land Reserve (ALR). While the Agricultural Land Commission (ALC) permits the use, the activity is not designated as a “farm use” and may be regulated or prohibited by a local government bylaw.

Introduced in 2010, the City’s A1t zoning requirement resulted from past experiences with this land use. The objectives were to ensure that the intended goals are better achieved; and the use does not create undue hardship on adjacent and nearby properties, owners and residents. This rezoning application represents just the second rezoning to be considered under the new regulations and no properties have been rezoned to date.

The applicants are proposing to develop ten (10) recreational vehicle (RV) sites on the subject property. Ten is the maximum number of units available to the subject property (1 unit / ha over 4 ha), and is the maximum for any parcel regardless of size (as per ALC regulations).

The subject property is well situated in many respects and is serviced by a number of urban services including a straight, paved road and the ability to connect to community water and sewer. The location is also central to many City amenities.

From an agricultural perspective, the subject property reflects excellent agricultural potential. As a larger property (>10 ha), the parcel contains all of the necessary attributes of a productive agricultural parcel capable of generating relatively high farm income.

While staff are supportive of agritourism and agri-tourist accommodation in general terms, staff support is reserved for instances where these activities can reasonably be expected to augment and enhance the principal use of agriculture. Staff are reasonably concerned with the lack of agricultural production and with the owners admitted lack of experience with farming. Both ALC and City Policy and Regulations are clear that agri-tourist accommodation is intended to support legitimate agricultural operations as an accessory use. Existing examples of agri-tourist accommodation developed prior to the requirement to rezone to the A1t zone demonstrate the inherent dangers where agriculture has become accessory to the accommodation, if existent at all.

While supporting the proposed rezoning (3 votes to 1) AAC members noted concerns with the proposal and the potential for negative impacts to agriculture. The AAC noted the location is among an agriculturally productive area with orchards located directly adjacent to the site of the proposed RV units. AAC concerns were primarily with respect to farmers' ability to carry out operations relatively unimpeded. Farm operators often apply chemicals to control pests and weeds which can result in spray drift ending up on adjacent properties. To reduce drift, farmers often spray in the early or late hours of the day when wind speeds are typically at their lowest. AAC members have commented on the difficulty of buffering impacts in general.

Staff share the AAC's concerns with respect to the impact on adjacent landowners operations and have concerns that even an extensive vegetative buffer (e.g. +20 metres including a berm, trees and shrubs) will provide sufficient mitigation. The applicants are proposing a 10 metre wide buffer with turf and a "privacy hedge along property line".

Conclusions

Staff suggest that the proposed rezoning is premature at this time. Council is being asked to place a great deal of faith that the proponents are capable of operating a working farm that is worthy of agri-tourist accommodation without a proven track record. The owners are encouraged to farm the land much closer to its potential and to demonstrate an ability to operate a working farm for a minimum of two full growing seasons.

Should Council support the proposed rezoning, staff recommend that Council require a minimum 20 metre wide buffer consistent with Schedule "A" to help limit the negative impacts. Staff also recommend that a Farm Plan prepared by a qualified professional outlining planting options and rotation schedule based on soil types and agricultural limitations for the balance of the land not presently productive be provided as part of the Development Permit.

In sum, the subject property is comprised of exceptional agricultural capability and has all of the necessary elements to be a productive farm. Agriculture is the intended principal use in the A1 zone and in the ALR, though provisions have been made to help augment farm income with non-farm uses such as agri-tourist accommodation. While supportive of the use, staff support is limited to those instances where a farm has been proven to be productive (including a large

investment into farming), the agri-tourist accommodation will result in limited impact on agriculture potential and will remain accessory to farming.

4.0 Proposal

4.1 Background/Project Description

The area proposed to be developed for agri-tourist accommodation is currently unplanted (see Figures 1 & 2 below). Based on airphoto interpretation, it is believed that less than 3.0 ha of the approximately 10.7 ha subject property are currently in production (orchard) and the remainder cultivated and free of agricultural production in 2011 and 2012.

The owners note the following plans for the subject property (see attached rationale):

“With the existing home on the property being of an age & condition no longer economical to use, we are planning a new home in the location shown on the attached plans. A new shop for farm machinery maintenance & repair is necessary as well. With the location of the proposed new home & shop, the 10 RV sites is best suited between the new buildings and Byrns Road. No damage to fields or orchard trees by RV vehicles. Topsoil will be removed from the location of the road & RV sites & utilized in other areas of the farm”.

And further:

“All sites will be landscaped with grass & trees, and the road & sites area will be graveled. A restroom facility will also be provided”.

4.2 Site Context

The subject property is located along Cooper, Benvoulin and Byrns Roads in the South Pandosy/KLO Sector of the City. The property is adjacent to urban land uses including single family and multi-family residential development, and is also adjacent to productive agricultural land (orchard). The subject property has a land use designation of Resource Protection Area in the City’s Official Community Plan and is zoned for Agriculture (A1). The property is also within the ALR and outside of the City’s Permanent Growth Boundary.

The subject property is within the City’s service area with respect to water and sanitary sewer. As such, if successful, the proposed agri-tourist accommodation would be connected to both City water and sanitary sewer. The Benvoulin Water Users irrigation ditch flowing from Mission Creek is located along the northern property boundary and provides irrigation water to the subject property.

Directly north are two agricultural properties (i.e. 2120 Cooper & 2025 Springfield Road) which have an active ALR Exclusion file under consideration.

An existing mobile home is located on the adjacent farm parcel (2050-2060 Byrns Rd) in close proximity to the shared property line and in close proximity to the proposed development.

The subject property is within a Farm Protection Development Permit and the proposed development of agri-tourist accommodation will require a Development Permit.

4.3 Parcel Summary

Parcel Size:	10.69 ha (26.4 ac)
Elevation:	359 - 365 masl

No soils or agricultural capability reporting was required for the purposes of this rezoning. However, the Canada Land Inventory (CLI) shows that the subject property has the potential for

land capability to increase through improvements such as dewatering and grading which would render the site 80% Class 2 and 20% Class 3 (i.e. prime). Soils of this quality are rare in the Okanagan context.

The surrounding properties are zoned as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Agricultural
South	A1 - Agriculture 1	No	Rural Residential
East	RM3 - Low Density Multiple Housing	No	Multi-family Residential
	RM5 - Medium Density Multiple Housing	No	Multi-family Residential
	A1 - Agriculture 1	No	Rural Residential
	A1- Agriculture 1	Yes	Agricultural
West	A1 - Agriculture 1	Yes	Agricultural

Figure 1: Proposed RV Site (in the foreground) Looking East Along Byrns Road (October 1, 2012)



Figure 2: Proposed RV Site (foreground) Looking North from Byrns Road (October 1, 2012)



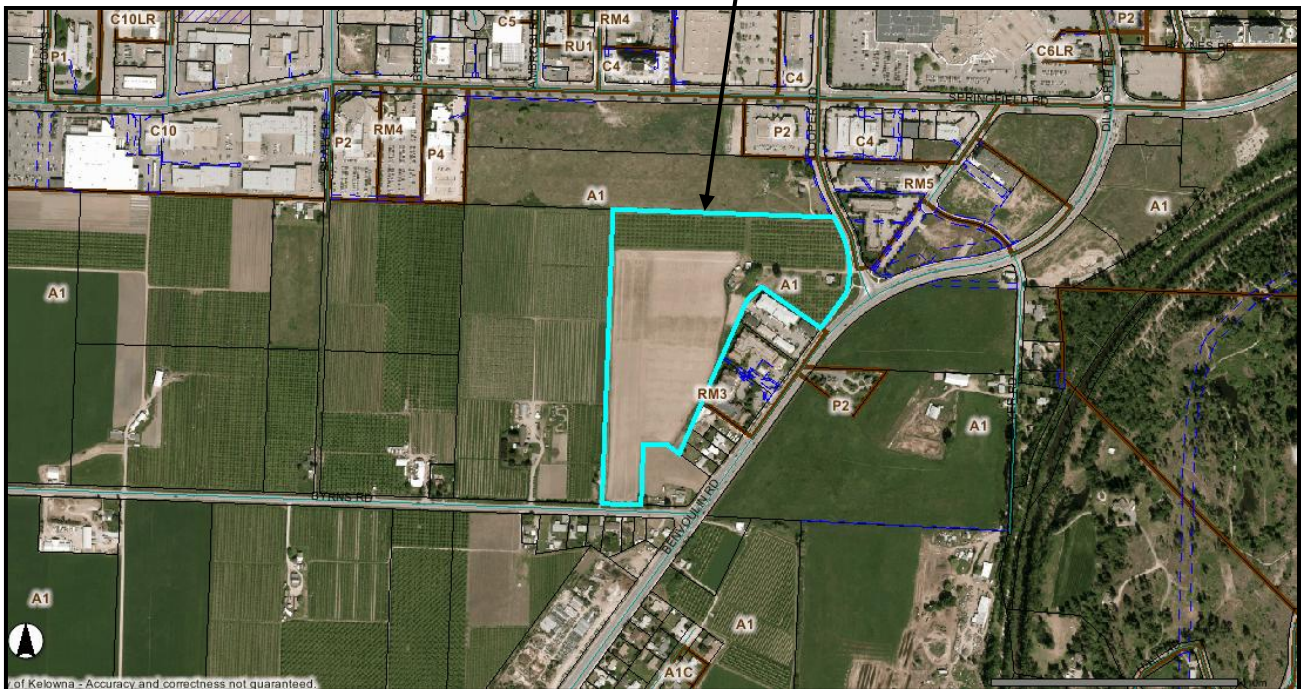
Figure 3: Western Property Line with Mobile Home on Adjacent Property (Google Street View - Date Unknown)



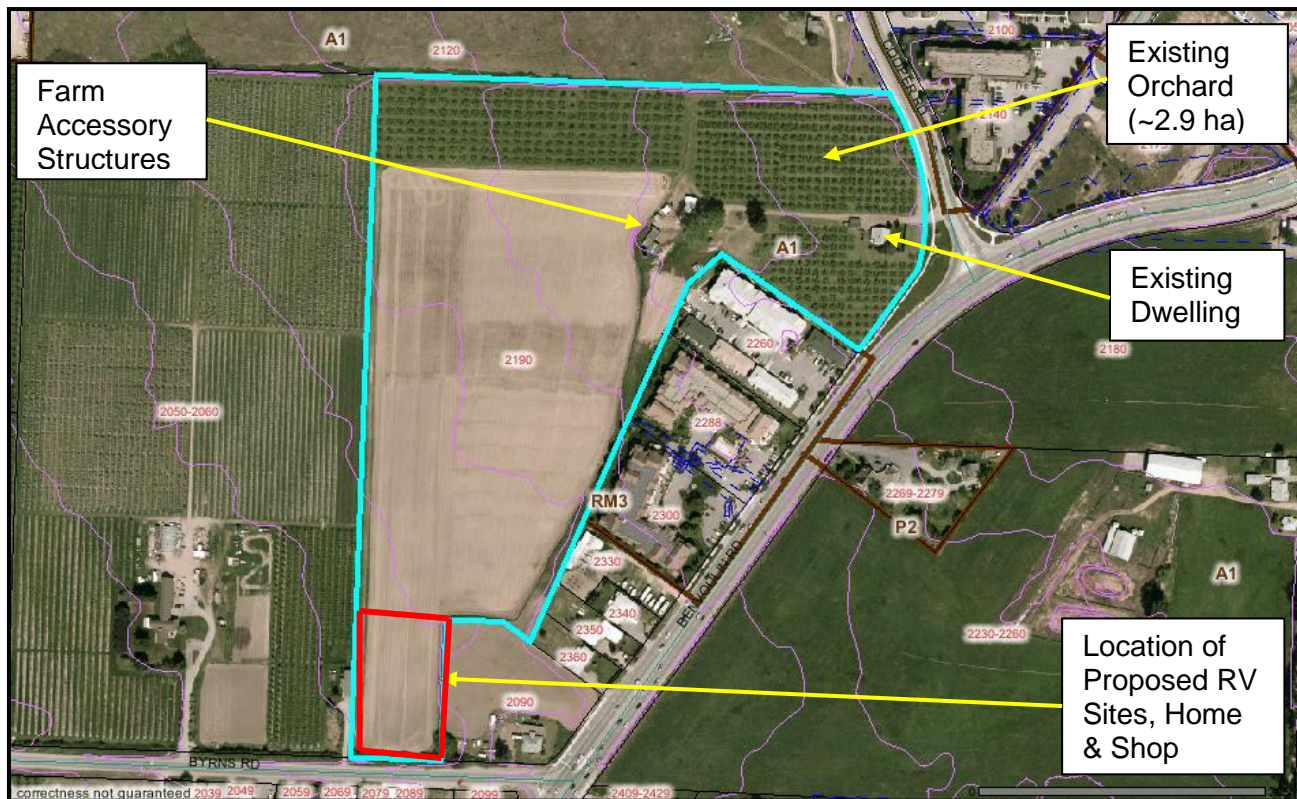
Figure 3: Subject Property and Existing Dwelling and Orchard Looking West from Cooper Road (Google Street View - Date Unknown)



4.4 Context Map : 2190 Cooper Road



4.5 Subject Property Map : 2190 Cooper Road



4.6 Development Criteria

CRITERIA	PROPOSAL	ZONE REQUIREMENTS
Minimum Lot Area	10.69 ha = 10 units	4 min, 10 max
Maximum setback from road	meets	30.0 m
Minimum distance from lot line	TBD	10.0 m
Maximum Site Coverage	<5%	5%

5.0 Current Development Regulations & Policies

5.1 Zoning Bylaw 8000

Section 2.3 - General Definitions¹

Agritourist Accommodation means the seasonal availability of short term accommodation for tourists on a farm, orchard, or vineyard in association with an agri-tourism activity which is subordinate and secondary to the principal agricultural use. Typical uses include but are not limited to seasonal farm cabins, and campsites/recreational vehicle sites. Seasonal, in this instance, means the accommodation must be available for use only between April 1 and October 31 of each year.

¹ City of Kelowna Zoning Bylaw 8000 - Section 2; p. 2-2.

Section 11.1 - Agriculture ¹²

- a) Purpose - Agri-tourist accommodation shall be accessory and subordinate to a legitimate agriculture operation. The intent is to augment or subsidize and not to replace or complete with farm income.
- c) Site coverage for agri-tourist accommodation shall not exceed 5% inclusive of buildings, landscaping, access, and servicing/sanitary facilities.

5.2 2030 Official Community Plan: Greening Our Future

Objective 5.33 Protect and enhance local agriculture³.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .6 Agri-tourist Accommodation. Agri-tourist accommodation will only be approved and operated in a manner that supports agricultural production and which limits the impact on agricultural land, City services and the surrounding community.

Objective 5.34 Preserve productive agricultural land⁴.

Policy .3 Homeplating. Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural lands.

Farm Protection DP Guidelines⁵

Objectives

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

Guidelines

1.2 On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

1.3 On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

- 1.3.1 Consistent with guidelines provided by Ministry of Agriculture “Guide to Edge Planning” and the ALC report “Landscape Buffer Specifications” or its replacement;
- 1.3.2 Incorporate landscaping that reinforces the character of agricultural lands. A majority of plant material selected should include low maintenance, indigenous vegetation;
- 1.3.3 Preserve all healthy existing mature trees located within the buffer area;

² City of Kelowna Zoning Bylaw 8000 - Section 11; p. A1-1 to A1-4.

³ City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.35.

⁴ City of Kelowna 2030 Official Community Plan (2011) - Development Process Chapter; p. 5.36.

⁵ City of Kelowna 2030 Official Community Plan (2011) - Farm Protection Development Permit Chapter; p. 15.2 - 15.4.

1.3.4 Integrate double rows of trees, including coniferous trees, and dense vegetation into the buffer;

1.3.5 Install and maintain a continuous fence along the edge of agricultural land. A permeable fence which allows for the movement of wildlife (i.e. split rail) in combination with dense and continuous evergreen hedge is preferred. Impermeable fencing will not be permitted.

5.3 City of Kelowna Agriculture Plan

Agri-tourist Accommodation⁶. Pursue an amendment to the Zoning Bylaw to include agri-tourist accommodation uses in conjunction with bona fide agricultural operation, consistent with conditions under the Land Commission Policy #375/97.

5.4 Agricultural Land Commission Agricultural Land Reserve Use, Subdivision and Procedure Regulation⁷

Part 1 - Definitions and Interpretation

1(1) "agri-tourism" means a tourist activity, service or facility accessory to land that is classified as a farm under the Assessment Act.

Part 2 -Permitted uses for land in an agricultural land reserve

3(1) The following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw or, for lands located in an agricultural land reserve that are treaty settlement lands, by a law of the applicable first nation government:

- (a) accommodation for agri-tourism on a farm if
 - (i) all or part of the parcel on which the accommodation is located is classified as a farm under the Assessment Act,
 - (ii) the accommodation is limited to 10 sleeping units in total of seasonal campsites, seasonal cabins or short term use of bedrooms including bed and breakfast bedrooms under paragraph (d), and
 - (iii) the total developed area for buildings, landscaping and access for the accommodation is less than 5% of the parcel@

6.0 Technical Comments

6.1 Building & Permitting Department

- a. Drawings for sewer and water including details of the actual connections for the RV's will be required at Building Permit stage.
- b. A water meter and possibly an upgrade to the water service are necessary.

6.2 Development Engineering Department

See attached.

6.3 Fire Department

A six metre road width should be maintained at all times for emergency vehicle access.

6.4 Public Health Inspector

No concerns with drinking water or wastewater disposal based on the referenced property having connection to the City of Kelowna municipal drinking water supply and sewer systems.

⁶ City of Kelowna Agriculture Plan; p. 85.

7.0 Application Chronology

Date of Application Received: September 19, 2012

Agricultural Advisory Committee: October 11, 2012

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on October 11, 2012 (See Minutes, attached) and the following recommendation was passed (Vote: 3 - 1):

THAT the Agricultural Advisory Committee support Rezoning Application No. Z12-0062, for 2190 Cooper Road, by Brian and Linda Pahl, to rezone the subject property from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation in order to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

Anecdotal Comment

The AAC raised concern with the potential urban/rural conflict. Specifically the drifting of pesticides and herbicides both onsite and on adjacent parcels into the RV area normal hours of operation for farmers (early in the morning and late at night) were of greatest concern. The AAC strongly recommends sufficient buffering with tall trees, shrubs and fencing to minimize the interface concerns. The AAC also recommends that landscape buffering be required prior to the applicant/owner being granted an Occupancy Permit or Business License.

Date Application Placed On Hold: October 23, 2012

Date Application Taken Off Hold: April 15, 2013

8.0 Alternate Recommendation

THAT Rezoning Application No. Z12-0062 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, District Lot 128, ODYD Plan KAP80629 located at 2190 Cooper Road, Kelowna, BC from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of the Development Engineering Branch being met;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the issuance of a Farm Protection Development Permit which includes a Farm Plan prepared by a Qualified Professional (Professional Agrologist) outlining planting options and rotation schedule based on soil types and agricultural limitations for the balance of the land not presently productive;

AND THAT the Farm Protection Development Permit require that the site be developed to include a minimum 20.0 metre wide Noise, Airborne Particle & Visual Screen (buffer) consistent with attached "Schedule A";

AND FURTHER THAT Council direct staff to not issue a Business License to operate an RV Park until one full growing season has passed and where the Qualified Professional has monitored the production and harvesting and advises that the results are satisfactory.

⁷ Agricultural Land Reserve Use, Subdivision and Procedure Regulation; Retrieved from:
http://www.alc.gov.bc.ca/legislation/Reg/ALR_Use-Subd-Proc_Reg.htm#sec3

Report prepared by:

Greg Sauer, Environment & Land Use Planner

Reviewed by:

☐

Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion
Sustainability

☐

D. Gilchrist, Acting General Manager, Community

Attachments:

Schedule "A": Buffer Types - A.4: Noise, Airborne Particle & Visual Screen (1 page)

Subject property/zoning map & ALR map (2 pages)

BC Land Inventory - Land Capability and Soil Classification (4 pages)

AAC Minutes (3 pages)

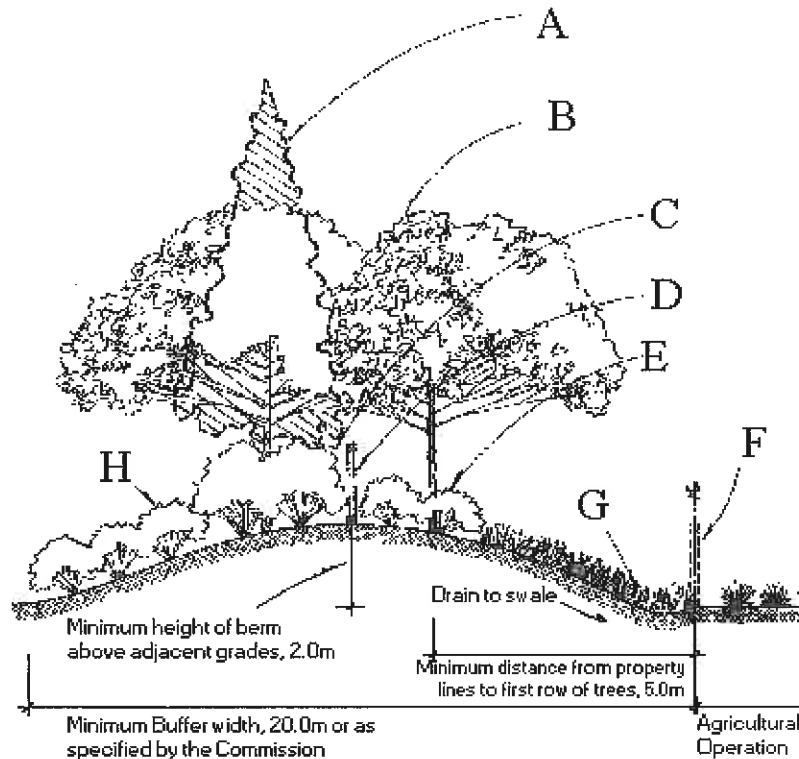
Development Engineering Comments (1 page)

Landowner's proposal (4 pages)

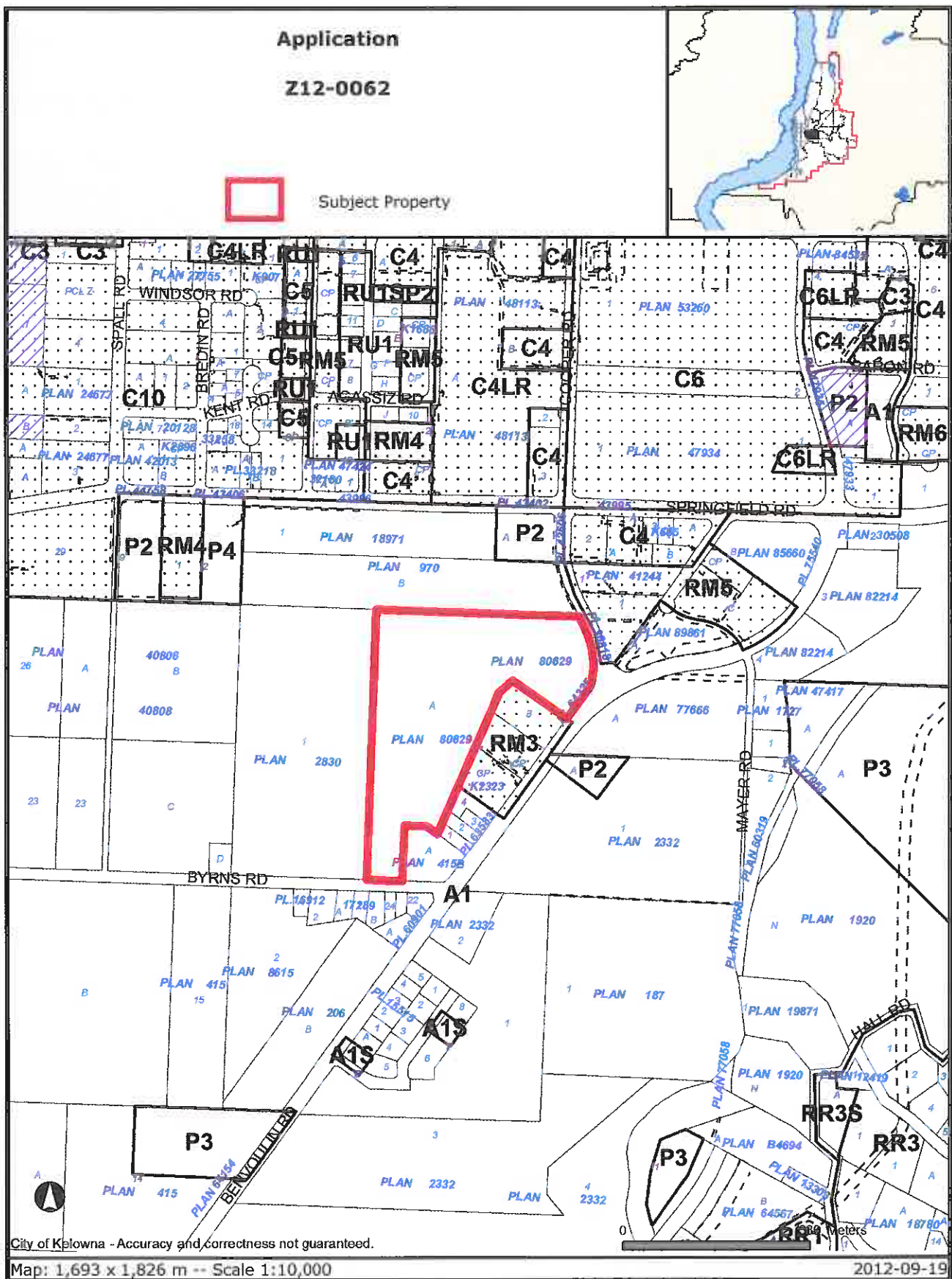
Schedule "A" - Noise, Airborne Particle & Visual Screen

- a. Yearly screen
- b. Summer screen

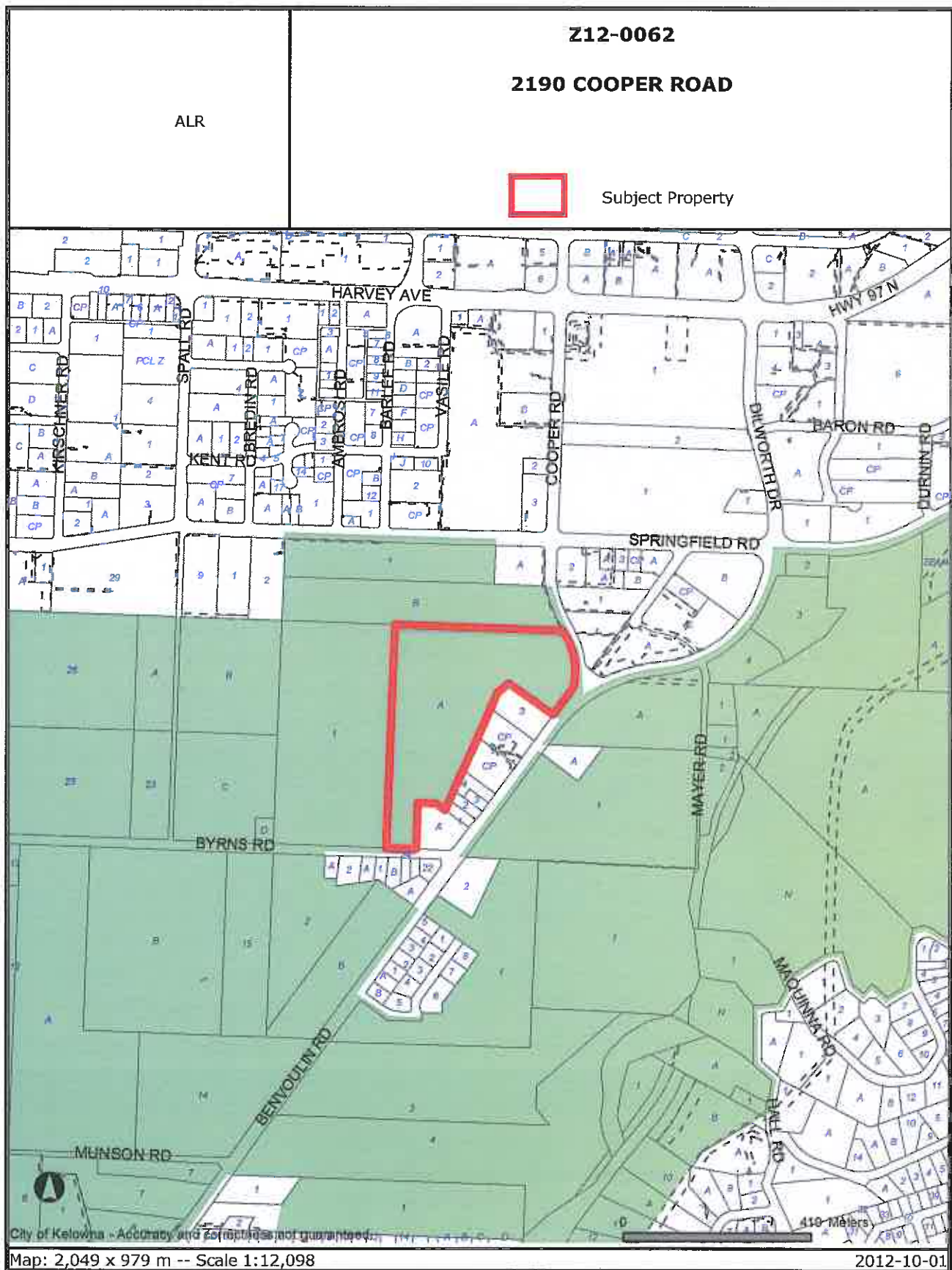
To buffer agricultural land from trespass and vandalism, visually screen incompatible uses, reduce the exchange of particulate matter between adjacent land uses and reduce the transmission of noise. (Note: Coniferous trees should be used in the buffer in situations where visual and particulate screening is required on a year round basis. Solution A.4a)



- A Yearly Screen - Minimum double row deciduous/coniferous trees. (continuous as shown)
See Schedules B.2, C.1 & C.3
Underplant and Fence as shown.
- B Summer Screen - Minimum double row deciduous trees. (continuous)
See Schedules B.1, C.1
Underplant and Fence as shown.
- C Minimum double row screening shrubs. (continuous)
See Schedules B.6, C.6a & C.6b
- D Solid wood fence as per Schedule D.____ of Fencing Specifications.
- E Minimum double row trespass inhibiting shrubs. (continuous)
See Schedules B.5 & C.5
- F Optional/additional fence location as per Schedule D.____.
- G Optional/additional fence location as per Schedule D.____.
- H Minimum triple row trespass inhibiting shrubs. (continuous)
See Schedules B.5 & C.5



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

1984-1994

2012

2020

2040

1840-1920

1980-1990

2271

SPRINGFIELD RD

2025

2091

2120

2121

2139-2141

2080

2100

2140

2175

2180

2190

8.4W 2.5W (8.2 2.3WF)

Area (ha): 10.7

Percent: 100 %

2260

2288

2300

2330

2340

2350

2360

2090

2269-2279

2230-2260

2409-2429

2589

2509

2519

2510

2529

2530

2509

2539

2550

2539

2039

2049

2059

2069

2079

2089

2095

2099

2430

2029

2550

2424

2105

2149

2153-2159

2169A-2169B

2179-2189

2271

2050-2060

AMBROSI RD

BARLEE RD

COOLER RD

BENYOULIN CT

BYRNS RD

BENYOULIN RD

BCLI Land Capability

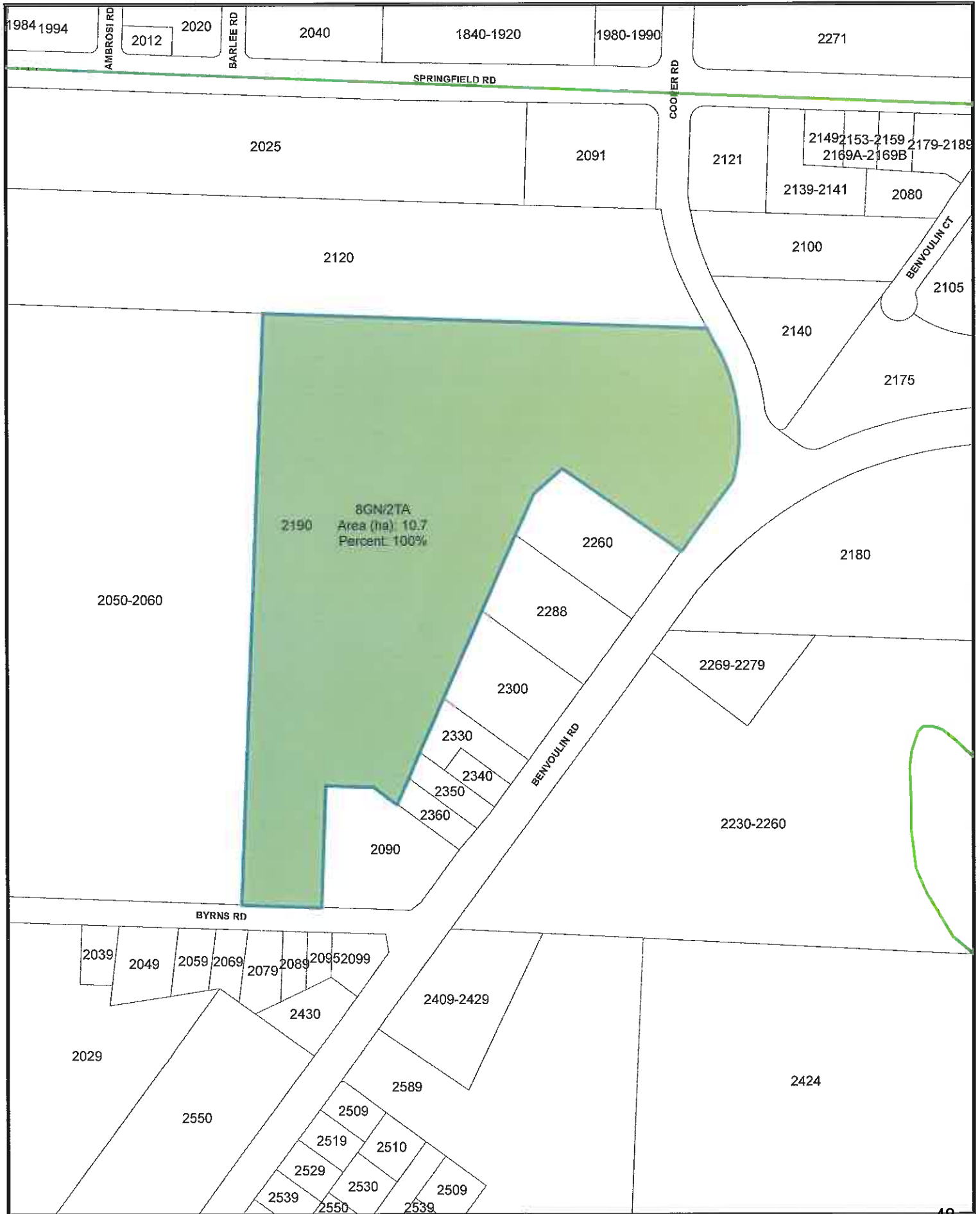
Legend

1	Land in this Class has no or only very slight limitations that restrict its use for the production of common agricultural crops. Land in Class 1 is level or nearly level. The soils are deep, well to imperfectly drained under natural conditions, or have good artificial water table control, and hold moisture well. They can be managed and cropped without difficulty. Productivity is easily maintained for a wide range of field crops.
2	Land in this Class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. Land in Class 2 has limitations which constitute a continuous minor management problem or may cause lower crop yields compared to Class 1 land but which do not pose a threat of crop loss under good management. The soils in Class 2 are deep, hold moisture well and can be managed and cropped with little difficulty.
3	Land in this Class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both. The limitations are more severe than for Class 2 land and management practices are more difficult to apply and maintain. The limitations may restrict the choice of suitable crops or affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
4	Land in this Class has limitations that require special management practices or severely restrict the range of crops, or both. Land in Class 4 has limitations which make it suitable for only a few crops, or the yield for a wide range of crops is low, or the risk of crop failure is high, or soil conditions are such that special development and management practices are required. The limitations may seriously affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
5	Land in this Class has limitations which restricts its capability to producing perennial forage crops or other specially adapted crops. Land in Class 5 is generally limited to the production of perennial forage crops or other specially adapted crops. Productivity of these suited crops may be high. Class 5 lands can be cultivated and some may be used for cultivated field crops provided unusually intensive management is employed and/or the crop is particularly adapted to the conditions peculiar to these lands. Cultivated field crops may be grown on some Class 5 land where adverse climate is the main limitation, but crop failure can be expected under average conditions.
6	Land in this Class is non-arable but capable of producing native and/or uncultivated perennial forage crops. Land in Class 6 provides sustained natural grazing for domestic livestock and is not arable in its present condition. Land is placed in this class because of severe climate, or the terrain is unsuitable for cultivation or use of farm machinery, or the soils do not respond to intensive improvement practices. Some unimproved Class 6 land s can be improved by draining, diking and/or irrigation.
7	Land in this Class has no capability for arable agriculture or sustained natural grazing. All classified areas not included in Classes 1 to 6 inclusive are placed in this class. Class 7 land may have limitations equivalent to Class 6 land but does not provide natural sustained grazing for domestic livestock due to unsuited natural vegetation. Also included are rock land, other non-soil areas, and small water bodies not shown on the maps. Some unimproved Class 7 land can be improved by draining, diking, irrigation, and/or levelling.

Subject Property Land Capability

Portion of Site	Land Capability Rating, Unimproved	Land Capability Rating, Improved
(10.7 ha / 100%)	<p>80% Class 4 with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops.</p> <p>20% Class 5 with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops.</p>	<p>80% Class 2.</p> <p>20% Class 3 with soils limited by excess water, other than from flooding, which limits agricultural use and by soluble salts which reduce crop growth or restrict the range of crops; and limited by lack of available nutrients, low cation exchange capacity or nutrient holding ability, high acidity or alkalinity, high levels of carbonates, presence of toxic elements or compounds, or high fixation of plant nutrients.</p>

Land Capability = Brown/ Soil Class = Green



Soil Classification

The soil classification for the subject property is homogenous with a single soil type as defined below.

Portion of Site / %	Soil Type	Description
10.7 ha / 100%	GN - Guisachan	<u>Land</u> : nearly level and very gently sloping fluvial floodplain deposits. <u>Texture</u> : 10 to 100 cm of silt loam, loam or sandy loam over loamy sand or very gravelly loamy sand. <u>Drainage</u> : poor, fluctuating groundwater table. <u>Classification</u> : Orthic Humic Gleysol.
80%		
20%	TA - Tanaka	<u>Land</u> : nearly level and very gently sloping fluvial fan deposits. <u>Texture</u> : 20 to 100 cm of sandy loam, silt loam or silty clay loam over sandy loam or minor gravelly sandy loam. <u>Drainage</u> : poor to very poor, high water table, subject to flooding. <u>Classification</u> : Rego Humic Gleysol: Calcareous phase.

AGRICULTURAL ADVISORY COMMITTEE

Minutes of the Open Meeting

Date: Thursday, October 11, 2012
Time: 6:00 p.m.
Location: Council Chambers, City Hall, Kelowna

In attendance:

Leo Gebert (Chair), Bob Hrasko, Yvonne Herbison (A), Edward Schiller (A)

Regrets:

Pierre Calissi (Vice Chair), Arthur (Gill) Green, Pete Spencer, Gordon Sandhu, John Janmaat

Staff:

Environment & Land Use Planner II, Greg Sauer

Recording Secretary:

Arlene McClelland

(*Denotes partial attendance)

1. CALL TO ORDER

The Chair called the meeting to order at 6:01 p.m.

Opening Remarks by the Chairperson regarding Conduct of the Meeting were read.

2. APPLICATIONS FOR CONSIDERATION

ITEM 1

Z12-0062

2190 Cooper Road

The applicant is seeking a Rezoning from the A1 - Agriculture zone to the Agri-tourist Accommodation (A1t) zone to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

Applicant/Owner: Brian and Linda Pahl

Staff:

- The applicant is requesting Council approval to rezone the parcel to allow for the addition of Agri-tourist Accommodation (A1t). The rezoning to A1t would facilitate the development and operation of ten (10) recreational vehicle sites which could be operated on a seasonal basis subordinate to the agricultural operation.
- Agri-tourist accommodation is a "permitted use" in the ALR but is not designated as a "farm use," and therefore may be regulated or prohibited by local government.
- Due to past issues with this land use, Kelowna has elected to exercise our regulatory capabilities with respect to agri-tourist accommodation in an effort to ensure better outcomes and to avoid undue hardship on adjacent agricultural operations and residents. The new zone addresses siting, buffering, and site coverage among other things.
- The subject property is located along Cooper, Benvoulin and Byrns Roads and is adjacent to both urban land uses including single and multi-family residential development and productive agricultural land.

- A Water Users irrigation ditch carrying water from Mission Creek is located along the northern property boundary and provides irrigation water to the subject property and properties downstream.
- The area proposed to be developed for Agri-tourist accommodation is currently unplanted while approximately 3.0 ha are currently in production in the form of tree fruit and the remainder cultivated and free of agricultural production in 2011.
- The applicant notes that they hope to construct a new home and shop for farm machinery maintenance and repair along with the 10 RV sites along Byrns Road. As mitigation, the applicants note that they intend to strip the topsoil from the development area for redistribution on the remainder of the subject property. In terms of buffering, the proposed site plan shows a privacy hedge, but no further details have been provided.
- The AAC is being asked to consider the appropriateness of rezoning the subject property to the A1t zone to allow for 10 RV sites as well as mitigation options for the proposal including siting, buffering and other options to minimize the potential impact to agriculture both on and offsite.

Applicant: Brian and Linda Pahl

- The property was purchased one year ago. Even though I have no farming background and have no intention of farming the property my son has indicated that he would like to manage ground crops. The existing pear orchard has been leased out and will continue to be leased.
- Believes that no one makes money in agriculture these days.
- Planted corn this year, but the crop did not work out due to the early season moisture and weed problems.
- Our background is in operating RV Parks in Texas where we just returned from.
- The current house on the property has no financial value and would like to build a new home as well as a new shop to store farm equipment. The RV Park would be in the same area.

AAC/Staff/Applicant Discussion:

- AAC raised concern with the proposed location of the house and shop. The Applicant noted that the front of the property is quite narrow and machinery cannot be turned around. The residential neighbours would most likely not appreciate the shop being at the front of the property due to the size and it maybe too large up against the road. The turning radius off of Benvoulin Road is very tight especially for those towing RV's and it would be safer being further away from the intersection.
- AAC confirmed with the Applicant that the old buildings on the property will be removed.
- AAC inquired about the location of servicing. The Applicant noted that the City advised that there would be no issue putting in sewer or water via Byrns Road which happens to be the main trunk line.
- AAC raised concern regarding the impact the RV Park would have on the neighbour's Orchard. The Applicant noted they would provide landscape buffering.
- AAC inquired if the Applicant had spoken to their neighbours regarding their proposal. The Applicant commented that they have not spoken to the neighbour to the west that operates an Apple Orchard. Have spoken to the neighbour to the east and they indicated they have no interest in farming.

There were no further comments.

RECOMMENDATION (ITEM 1)

MOVED BY Bob Hrasko/SECONDED BY Leo Gebert

THAT the Agricultural Advisory Committee support Rezoning Application No. Z12-0062, for 2190 Cooper Road, by Brian and Linda Pahl, to rezone the subject property from the A1 - Agriculture zone to the A1t - Agriculture 1 with Agri-tourist Accommodation in order to facilitate the development and operation of ten (10) recreational vehicle sites which may be operated on a seasonal basis subordinate to the agricultural operation.

CARRIED

Yvonne Herbison- Opposed

Anecdotal Comment:

The Agricultural Advisory Committee raised concern with the potential urban/rural conflict. Specifically the drifting of pesticides and herbicides both onsite and on adjacent parcels into the RV area and the hours of operation (early in the morning and late at night) were of greatest concern. The AAC strongly recommends sufficient buffering with tall trees, shrubs and fencing to minimize the interface concerns. The AAC also recommends that landscape buffering be required prior to the applicant/owner being granted an Occupancy Permit or Business License.

ITEM 2

A12-0015

1155 McKenzie Road

The applicant is seeking a Non-Farm Use, pursuant to Section 20(3) of the *Agricultural Land Commission Act*, to allow for a secondary suite in accessory building (i.e. "Carriage House") on the subject property.

Applicant/Owner: Elizabeth Heier

Staff:

- The applicant is requesting permission from the ALC for a "non-farm use" within the ALR to allow for rezoning to a zone that would permit a second dwelling in the form of a carriage house on the subject property.
- The subject property is a 0.55 hectare or 1.38 acres parcel located south of McKenzie Road on the "McKenzie Bench". The site elevation varies between 507 m and 521 m while the soils in this area are Class 6 with improved ratings of Class 3 and 4 according to the land inventory. Soil limitations include droughtiness and topography in one portion and excess water and lack of nutrients in another.
- While not a homesite severance per se, the subject property functions as if created by a homesite severance and the background of how the lot came to be are akin to a homesite severance. As the subject parcel did not meet the minimum lot size of the A1 zone at the time of subdivision, it was rezoned to the Rural Residential zone to reflect this.
- The future rezoning would be from the RR2 zone to the RR2c zone.

AAC/Staff/Applicant Discussion:

- AAC commented that this proposal provides no benefit to agriculture.
- Staff provided an explanation of a carriage house.
- AAC confirmed with staff that there is currently no agricultural activity on this property.
- AAC commented that there is agriculture capability on this land.
- AAC raised concern with increasing the urban/rural conflict by adding more people who may not understand or welcome agricultural impacts.

CITY OF KELOWNA
MEMORANDUM

Date: October 3, 2012
File No.: Z12-0062

To: Land Use Management Department (GS)

From: Development Engineering Manager

Subject: 2190 Cooper Road

A1 to A1t

Development Engineering has the following requirements associated with this rezoning application.

1. Domestic Water and Fire Protection

This property is currently serviced with a 25mm-diameter copper water service. The applicant is required to submit a report addressing the available fire flow supply to adequately protect the proposed development in accordance with current fire protection standards for the type of development contemplated with this application. All charges for service connection and upgrading costs can be provided by the City at the owner's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrades.** For estimate inquiry's please contact Sergio Sartori, by email ssartori@kelowna.ca or phone, 250-469-8589.

2. Sanitary Sewer

Our records indicate that this property is not serviced. All charges for service connection and upgrading costs can be provided by the City at the owner's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrades.** For estimate inquiry's please contact Sergio Sartori, by email ssartori@kelowna.ca or phone, 250-469-8589.

3. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

Steve Muenz, P. Eng.
Development Engineering Manager

ss

BRIAN & LINDA PAHL

Kelowna, BC V1V 2C8

Email blj

Brian's Cell

Linda's Cell

September 4, 2012

Re: 2190 Cooper Road

To Whom It May Concern,

We are writing to notify our intentions to construct 10 RV sites on the above noted property.

These 10 sites will have services of City water, City sewer, 30 & 50 amp electrical service (FortisBC). All sites will be landscaped with grass & trees, and the road & sites area will be graveled. A restroom facility will also be provided.

The location of the sites is beneficial in many ways to both the tourist industry & the ongoing farming of the property. This is Agro-Tourism at its finest. The location of this property is very central to the heart of Kelowna - Orchard Park, Farmers' Market, Father Pandosy Mission, Mission Creek Park, golfing & numerous other activities. As well, it is in the heart of orchards, fields of hay and other fruit & vegetable crops, right in the very vicinity. We are one of those fields & orchards, right on this very property. The opportunity for Visitors to Kelowna to be so close to amenities & yet have a feel for the agricultural life of the area, is unique in this setting.

With the existing home on the property being of an age & condition no longer economical to use, we are planning a new home in the location shown on the attached plans. A new shop for farm machinery maintenance & repair is necessary as well. With the location of the proposed new home & shop, the 10 RV sites is best suited between the new buildings and Byrns Road. No damage to fields or orchard trees by RV vehicles. Topsoil will be removed from the location of the road & RV sites & utilized in other areas of the farm.

We look forward to many years of farming the land while we give our traveling visitors an opportunity to see part of what makes our city so desirable.

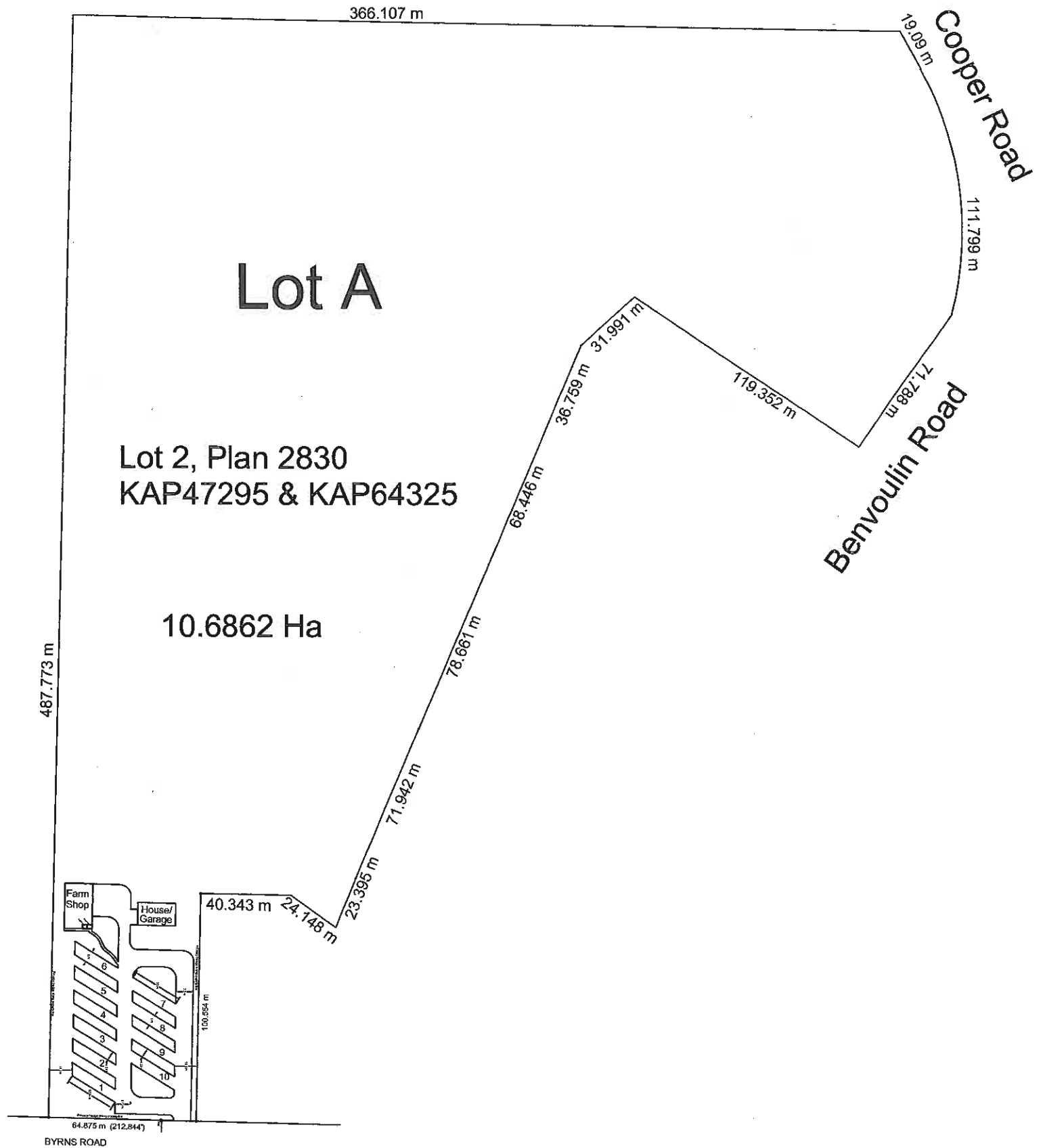
Should you need to contact us, please feel free to do so at the above numbers or email.

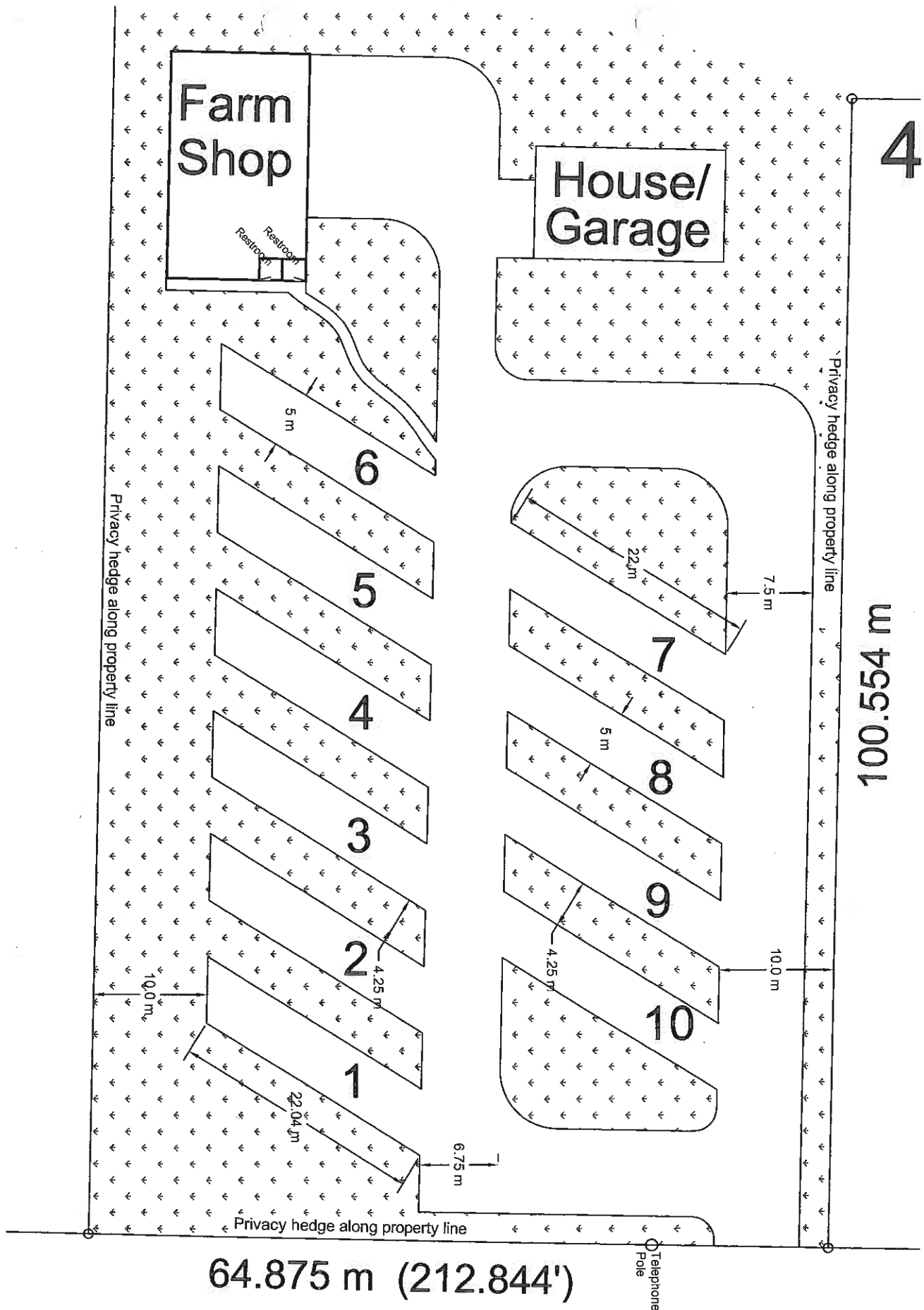
Yours Truly,



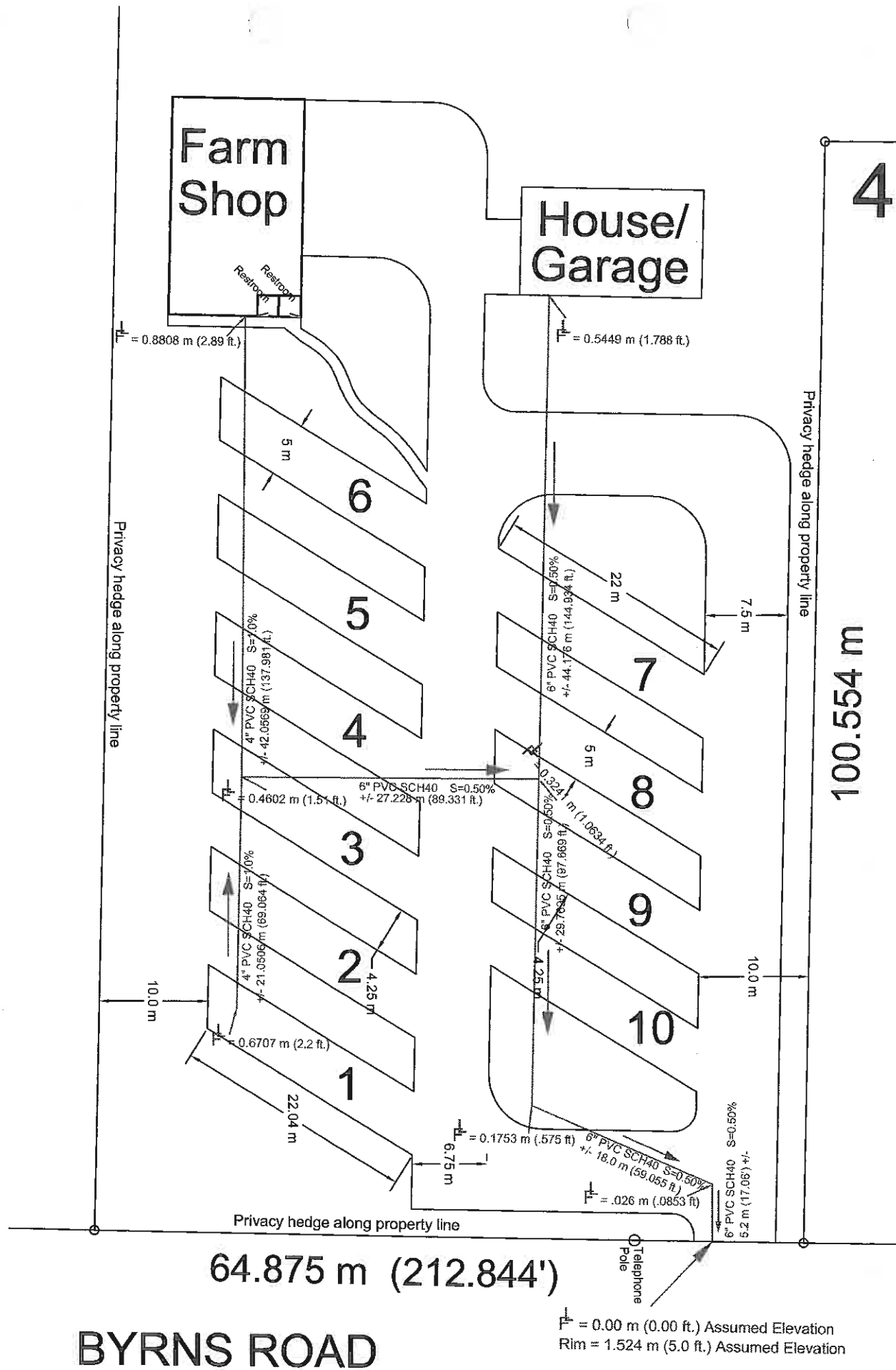
For: Brian & Linda Pahl

/lp





BYRNS ROAD



REPORT TO COUNCIL



Date: May 6, 2013

RIM No. 1250-30

To: City Manager

From: Land Use Management, Community Sustainability (BD)

Application: Z13-0011 **Owner:** Wendy Diana Cullen & Michael Steve Anderson

Address: 370 Fleming Road **Applicant:** Wendy Diana Cullen & Michael Steve Anderson

Subject: Rezoning Application

Existing OCP Designation: Single/two unit Residential

Existing Zone: RU1 - Large Lot Housing

Proposed Zone: RU1c - Large Lot Housing with Carriage House

1.0 Recommendation

THAT Rezoning Application No. Z13-0011 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot B, Section 27, Township 26, ODYD Plan 11730, located on 370 Fleming Road, Kelowna, BC from the RU1- Large Lot Housing zone to the RU1c- Large Lot Housing with carriage house zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Variance Permit for the subject property;

AND FURTHER THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch being completed to their satisfaction.

2.0 Purpose

To rezone the subject property from the RU1 - Large Lot Housing zone to the RU1c - Large Lot Housing with carriage house zone to allow the legalization of a carriage house.

3.0 Land Use Management

The applicant is seeking to rezone the subject property to allow the conversion of a garage to a carriage house. This application is the result of Bylaw enforcement and Staff do not condone the use of dwellings without the appropriate permits and approvals. However, the subject property

can easily accommodate an additional dwelling unit and meets the Zoning Bylaw requirements. Given that the building was initially constructed as a garage, the building requires a variance to the south side yard setback. There are several examples of RU6 - two dwelling housing lots in the immediate neighbourhood. The immediate abutting neighbours provided a letter of support.

The subject property is located within the Permanent Growth Boundary. Policies within the Official Community Plan support the sensitive integration into existing neighbourhoods, where services are already in place and densification can easily be accommodated. The subject property is in close proximity to parks, schools, transit and recreational opportunities.

Should the land use and variance be supported by Council, a Development Permit will be executed at a Staff level.

4.0 Proposal

4.1 Project Description

The principal dwelling and the garage were constructed in 2005. The main floor of the garage has been converted to a two bedroom suite with a small kitchen and main living area on the ground floor. The upper attic space is utilized for storage and is accessed through a separate door. The required parking is achieved on the site and plenty of outdoor private space is available on this comparatively large sized lot.

4.2 Site Context

The subject property is located in the Rutland area of Kelowna. The Houghton Road multi-purpose corridor is located at the end of the block providing easy access to the Rutland town center. The surrounding properties are zoned as follows:

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1- Large Lot Housing	Single Family Dwelling
East	RU1- Large Lot Housing & RU6 - Two Dwelling Housing	Single Family Dwelling & Duplex
South	RU1- Large Lot Housing	Single Family Dwelling
West	RU1- Large Lot Housing	Single Family Dwelling

4.3 Subject Property Map: 370 Fleming Road



4.4 Zoning Analysis

The proposed application meets the requirements of RU1c - Large Lot Housing with carriage house zone as follows:

Zoning Analysis Table		
CRITERIA	PROPOSAL	RU1c ZONE REQUIREMENTS
Existing Lot/Subdivision Regulations		
Lot Area	1,397 m ²	550 m ²
Lot Width	24.73 m	16.5 m
Lot Depth	50.98 m	30 m
Development Regulations Principal Dwelling		
Height	7.3 m	9.5 m / 2 ½ storeys
Front Yard	8.5 m	4.5 m or 6.0 m to garage
Side Yard (north)	3.05 m	2.3 m (2 - 2 ½ storey)
Side Yard (south)	8.84 m	2.0 m (1 - 1 ½ storey) 2.3 m (2 - 2 ½ storey)
Rear Yard	32.7 m	7.5 m
Proposed Carriage house		
Height	3.8m	1 ½ storeys / 4.5 m
Front Yard	28.07m	4.5 m
Side Yard (n)	18.6 m	2.0 m (1 - 1 ½ storey)
Side Yard (s)	1.5 m ①	2.0 m (1 - 1 ½ storey)
Rear yard	11.94 m	7.5m
Other Requirements		
Floor Area Ratio	Principal dwelling: 320 m ² Carriage House: 87 m ² 27 %	May not exceed the lesser of 90 m ² or 75%
Parking Stalls (#)	3 spaces	3 spaces required
Private Open Space	meets requirements	30 m ² of private open space per dwelling
① Variance required to legalize the south side yard.		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

Policy 5.2.3 **Complete Suburbs.**² Support a mix of uses within Kelowna's suburbs (see Map 5.1 - Urban Core Area), in accordance with "Smart Growth" principles to ensure complete communities. Uses that should be present in all areas of the City (consistent with Map 4.1 - Future Land Use Map), at appropriate locations, include: commercial, institutional, and all types of residential uses (including affordable and special needs housing) at densities appropriate to their context.

6.0 Technical Comments

6.1 Building & Permitting Department

1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.

2) Operable bedroom windows required as per the 2012 edition of the British Columbia Building Code (BCBC 12).

3) Full Plan check for Building Code related issues will be done at time of Building Permit applications.

6.2 Development Engineering Department

See attached.

6.3 Bylaw Services

Illegal suite investigation. File #241993

6.4 Fire Department

An unobstructed and easily distinguishable firefighter access path, of 1100 mm, from Fleming Road to the back of the property line as well to the secondary detached suite main entrance is required. The new home is required to have a visible address facing Fleming Road.

6.5 Fortis Gas

FortisBC Gas has reviewed the above mentioned referral. There is currently a gas service that runs to the center of the existing house but does not look like it will be affected by the new carriage house. Regardless the customer should dig with caution.

7.0 Application Chronology

Date of Application Received: February 25, 2013

Additional details provided: May 6, 2103

Report prepared by:

Birte Decloux, Land Use Planner

Reviewed by:

☐

Danielle Noble, Manager, Urban Land Use

Approved for Inclusion:

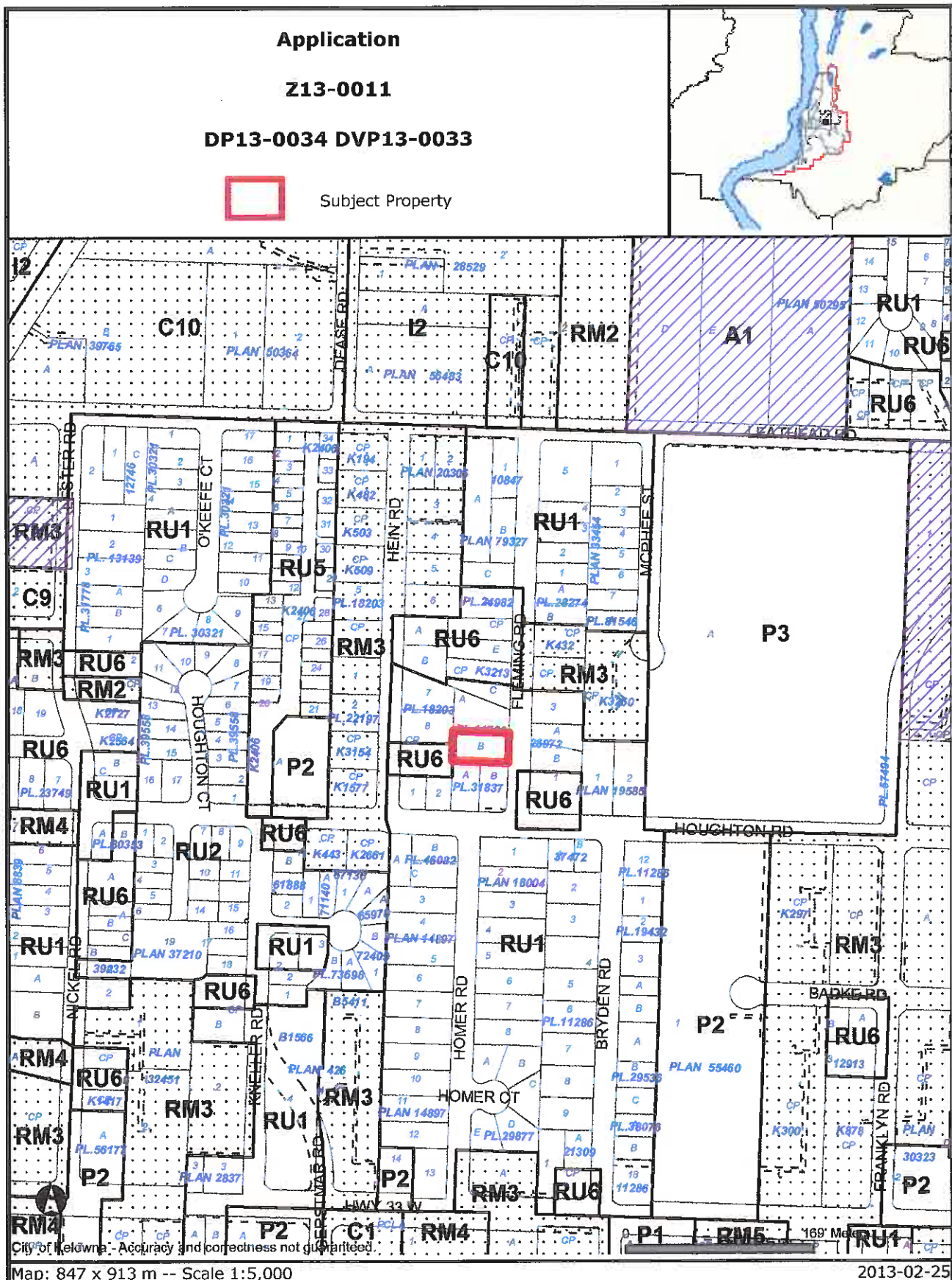
☐

Doug Gilchrist, Acting General Manager,
Community Sustainability

² Official community plan Objective 5.2 Community Sustainability

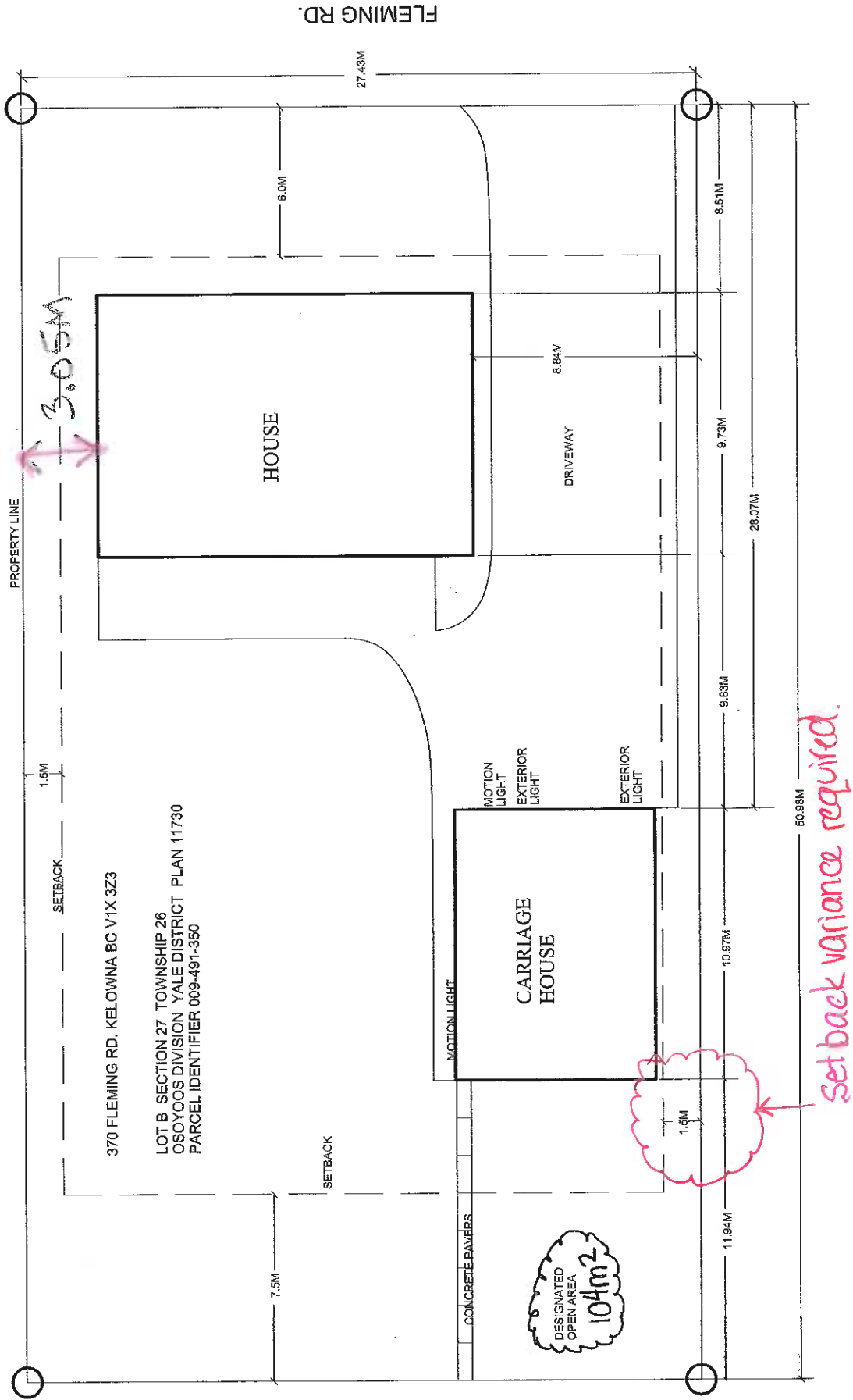
Attachments:

Site Plan
Conceptual Elevations
Landscape Plan
Context/Site Photos
Sustainability Checklist



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

Site Plan





FRONT ELEVATION

SCALE: 1/4" = 1'-0"

WINDU VENT

CONSTRUCTION ANNOTATED

1/4" & 3/4" DIA. TYP.
SP. HOLLOW, BRASS LOCATIONS

RIGHT SIDE ELEVATION

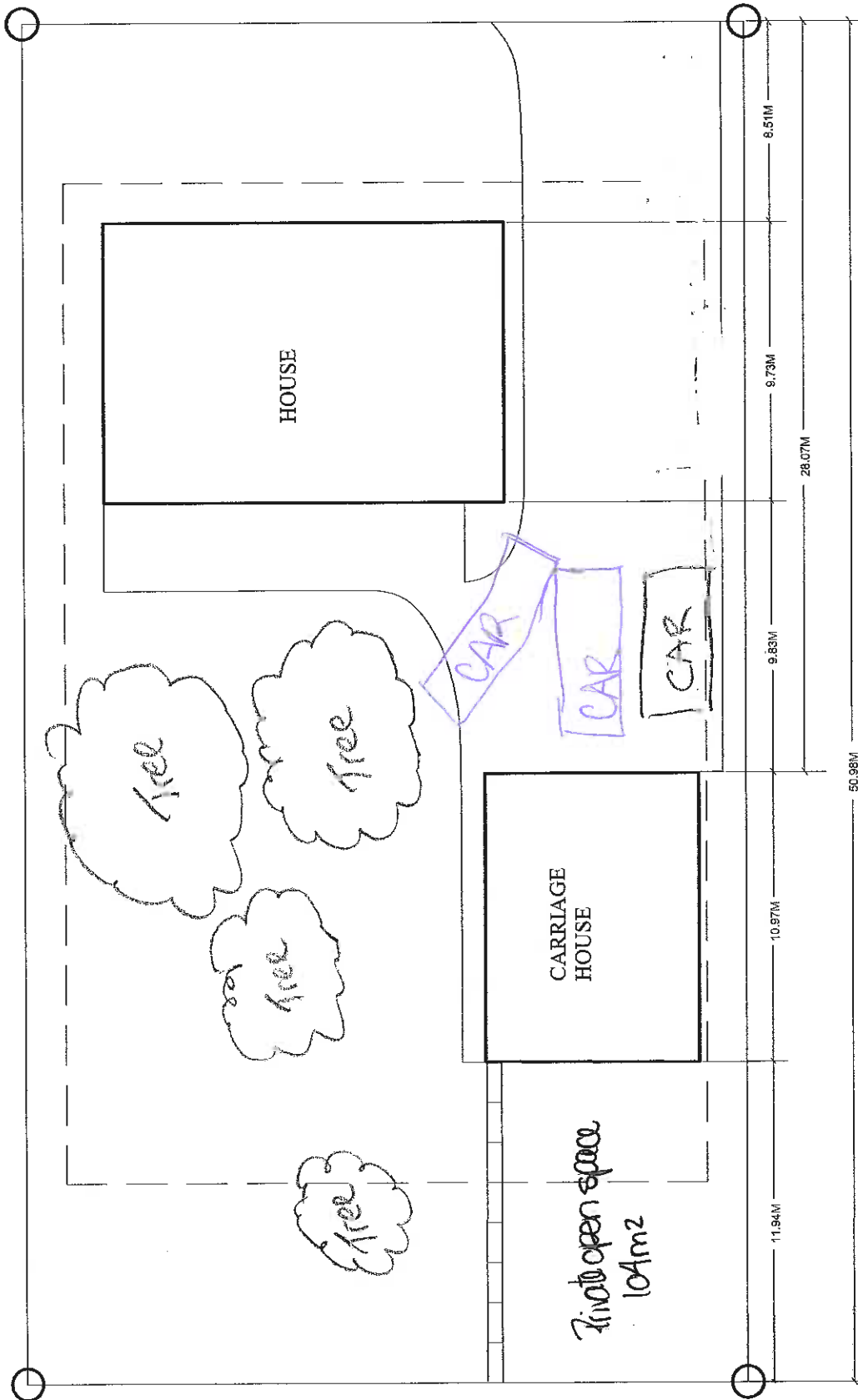
LEFT SIDE SIMILAR

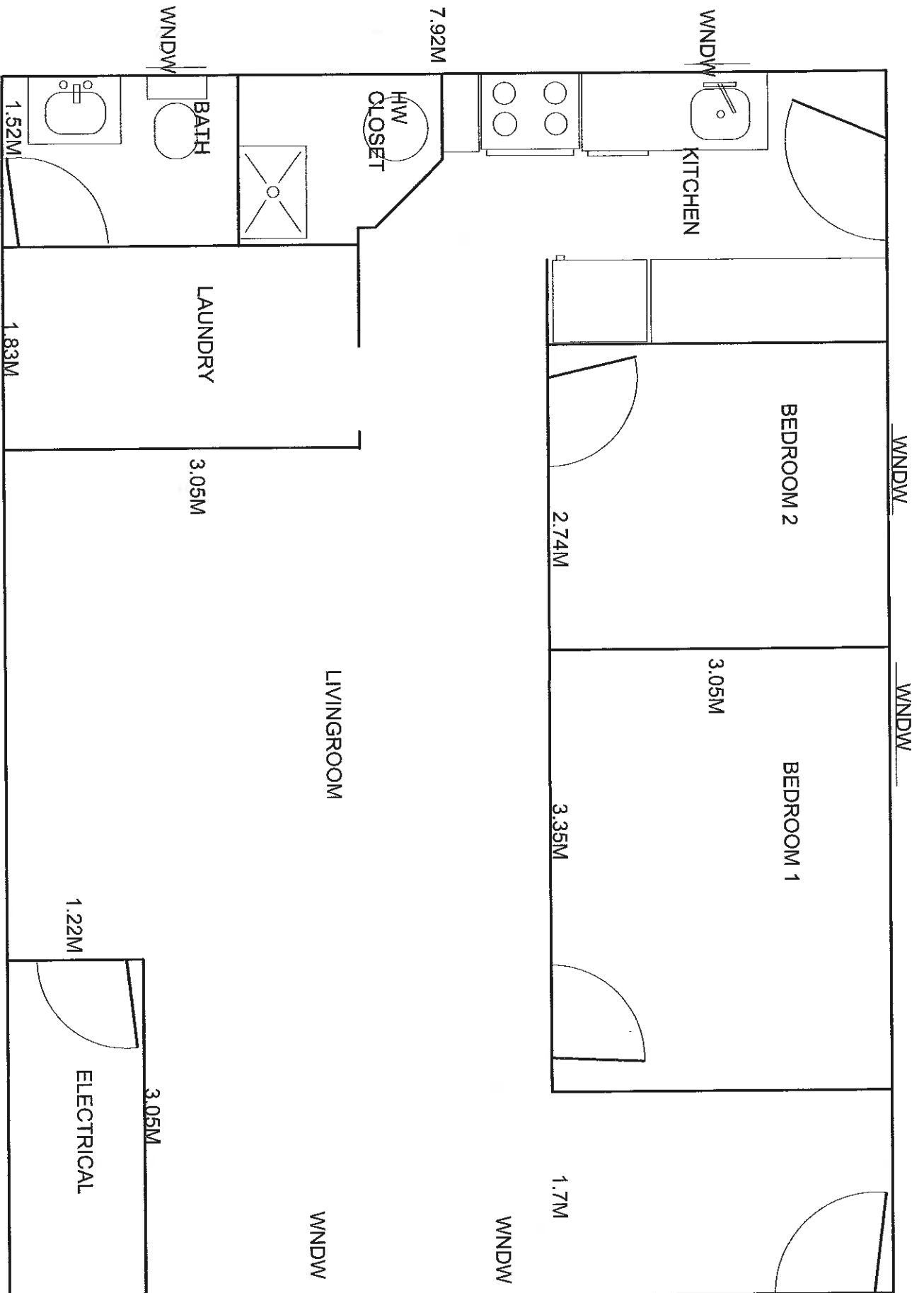
SCALE: 1/4" = 1'-0"

PARTIAL WALL ELEVATION
SHOWN AT CHAINED LINE

Landscape Plan

1 2







CITY OF KELOWNA

MEMORANDUM

Date: March 5, 2013
File No.: Z13-0011
To: Land use Management (BD)
From: Development Engineer Manager (SM)
Subject: 370 Fleming Road – Lot B, Plan 11730, Sec. 27, Twp. 26, ODYD

The Development Engineering comments and requirements regarding this application to rezone from RU-1 to RU-1c (carriage) are as follows:

1. Subdivision

Provide easements as required

2. Domestic water and fire protection.

This development is within the service area of the Black Mountain Irrigation District (BMID). All the fees and charges are to be paid directly to BMID.

3. Sanitary Sewer.

The subject property is located within the Local Area Service (LAS) #20 and the property has cash commuted 1 SFE (Single Family Equivalent) in 2005. The current Policy requires that all the LAS charges be cash commuted when the property is rezoned. The pay-out charge for a house and a carriage house is 1 and ½ SFE less the 1.0 SFE already paid. The current LAS #20 payout rate is \$3,782.00 per SFE and the total charge is in the amount of **\$1,891.00** the charge is valid until March 31, 2013.

4. Bonding and Levies Summary.

Levies

Local Service Area #20 charges

\$ 1,891.00



Steve Muenz, P.Eng.
Development Engineer Manager

B²

CITY OF KELOWNA

BYLAW NO. 10849

Z13-0011 - Wendy Diana Cullen & Michael Steve Anderson 370 Fleming Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot B, Section 27, Township 26, ODYD Plan 11730 located on 370 Fleming Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU1c - Large Lot Housing with Carriage House zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Approved under the Transportation Act

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: May 17, 2013

RIM No. 1210-21

To: City Manager

From: Land Use Management, Community Sustainability (GS)

Application: A13-0008
Owner: Ronald McMillan
James McMillan
Wilma McMillan

Address: 3690 Berard Road
1640 Ward Road
Applicant: Ron McMillan

Subject: Non-farm use in the Agricultural Land Reserve (ALR) application.

Existing OCP Designation: Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve appeal A13-0008 for Lot 2, Section 8, Township 26 Osoyoos Division Yale District Plan 1554, located at 3690 Berard Road and for Lot 3, Section 8, Township 26 Osoyoos Division Yale District Plan 1554 except Plan B4459, located at 1640 Ward Road, Kelowna, B.C. for a non-farm use of agricultural land in the Agricultural Land Reserve, pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

AND THAT Municipal Council forward the subject application to the Agricultural Land Commission.

2.0 Purpose

To obtain a Council recommendation on a proposal to operate two non-farm uses in the Agricultural Land Reserve (ALR). Specifically, the applicant is seeking non-farm uses with respect to an activity referred to as Farmersgolf™ and a concession stand for visitors to the farm.

3.0 Land Use Management

The City of Kelowna is comprised of extensive agricultural land with varying crops and with production ranging from none to intensive. Despite the extensive agricultural land base, agri-tourism remains a largely undeveloped and untapped industry in an area known for its beautiful physical geography and tourism values. When done right, the marriage between these two industries can result in great synergies with farmers earning extra income, new markets being created for farm product and attention being brought to the importance of this primary industry.

In the fall of 2012 the Central Okanagan Economic Development Commission (COEDC) issued a Request for Proposals (RFP) entitled *From Agriculture to Agr-Tourism: Agri-Tourism Opportunities Pilot Project*. The RFP states:

Agri-tourism development is an economic development strategy that has been demonstrated in a number of countries as a way for farmers to add value to their farm businesses. A major tourism trend focuses on a new type of visitor looking for sustainable, environmentally conscious holidays and authentic travel experiences - experiences that fit well with many agri-tourism activities. This project is aimed at creating a model for agri-tourism development in the Central Okanagan that can be used to provide ongoing support and assistance to this emerging sector.

With their proposed agri-tourism expansion concept, the applicants were one of three successful proposals. As a result, the applicants are collaborating with the COEDC to improve their operations while raising the overall profile of agri-tourism in the Central Okanagan.

Land Use Management staff are entirely supportive of agri-tourism when done appropriately. To obtain this support, agri-tourism must enhance the existing agriculture which is conducted as the primary use of the land while helping to raise the profile of agriculture in our region. This is to say that agri-tourism must remain subordinate to the principal use of agriculture.

The proposed Farmersgolf™ is an extensive use of the land in that it will be played over a large area of land, but is not intrusive as the impact to the land is anticipated to be low. The proposed concession would be conducted within an existing small structure. The proposal is consistent with City policy with respect to agri-tourism (see Section 5 below). Both the AAC (unanimous support, see Section 7.0 below) and Land Use Management staff feel that the proposed uses are consistent with agri-tourism and provide our qualified support. Ministry of Agriculture staff also reviewed the application and cited no concerns.

City staff do provide some cautionary comments for Council. With respect to Farmersgolf, City staff support the use contingent on the agricultural uses remaining at, or above, the current level of operation. Should agricultural activities such as livestock grazing, haying and the growing of produce (e.g. corn and pumpkins) diminish over time for any reason including the success of the agri-tourism operations, staff would no longer be supportive.

Further, in the event that Farmersgolf becomes reasonably successful, parking is likely to become an issue. Currently, parking is limited to approximately six parking spaces onsite near Berard Road much of the year, with an expanded parking area come late fall when the pumpkin patch has been harvested. City staff doesn't support parking spilling offsite, or to extensive areas of productive land being converted to parking. As the City does not presently regulate parking (maximums or minimums) with respect to agri-tourism, Council may wish to recommend restriction of the parking area should the ALC approve the use.

Staff have encouraged the applicants to consider exhibiting and retailing local (e.g. Okanagan) agricultural products only at the proposed concession. Staff do not view the retailing of non-farm/non-local products as desirable. Retailing local farm products would however result in a win-win scenario for the applicant, local producers and the guests/tourists. Similar to parking, Council may wish to recommend restricting the products that may be retailed through the concession.

As a side note, but worth mentioning is that the applicants intend to work with a Certified Environmental Farm Planner to prepare an Environmental Farm Plan. The farm is located in an area of high environmental value adjacent Mission Creek. The values can be enhanced with relatively small changes which are likely to enhance the agricultural potential as well. Staff are highly supportive of this type of approach to stewardship of agricultural land.

In sum, City staff recommend that Council and the ALC support this proposal. City staff do however recommend that the Non-Farm Use be granted subject to periodic review with respect to the above-noted concerns.

4.0 Proposal

4.1 Background/Project Description

The two subject properties under consideration account for approximately 45.0 hectares (111 acres) of land, all of which is in the ALR. In 1950 the McMillan family purchased the farm which was operating as a dairy farm and which continued until 1972. Since shutting down the dairy operation, the land has primarily been used to grow hay and board horses. The applicants note that they have been working to revive the farm operations since returning to the farm in 2004.

The farm is currently being used to operate a number of seasonal agri-tourism activities which include hayrides, corn and hay maze, pumpkin patch and pumpkin slingshot. The aforementioned agri-tourism activities have been permitted without the need for a “non-farm use” determination as the uses are consistent with the ALC’s definition of agri-tourism.

The applicants are now seeking permission from the ALC to add Farmersgolf™ between May and October annually. Having no background with this type of use, ALC staff advised City staff that the ALC Commissioners should have an opportunity to review this use to determine its consistency with the ALC’s mandate.

Farmersgolf is a relatively new activity invented by a couple from the Netherlands in 2000. Currently there are fewer than 200 courses worldwide, though the activity has no presence in Western Canada and only three currently operating in Central and Eastern Canada.

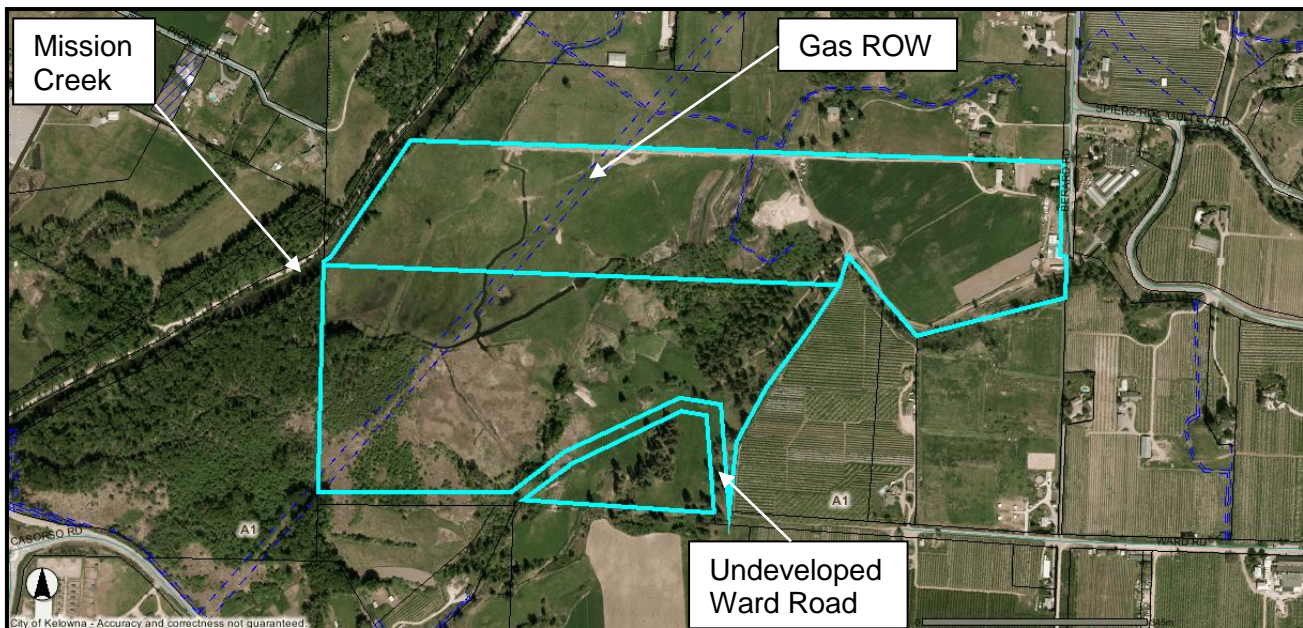
Farmersgolf uses a club (constructed from a Dutch wooden shoe) and a soccer ball with pails used for holes and flags to demark the location of the hole. The applicants note that the game is played on an otherwise unaltered farm site with obstacles and hazards including the farm activities. The course is not fixed and can be altered at any time (see Application, attached).

The founders state that: *“a Farmersgolf course is almost not visible in the landscape because the farm is the golf course. On our farm we play without problems with health or injury in between the cows. The cows graze on the fairway and our holes are very simple. The only thing noticed are the numbered flags”* (see Letter of Support, attached).

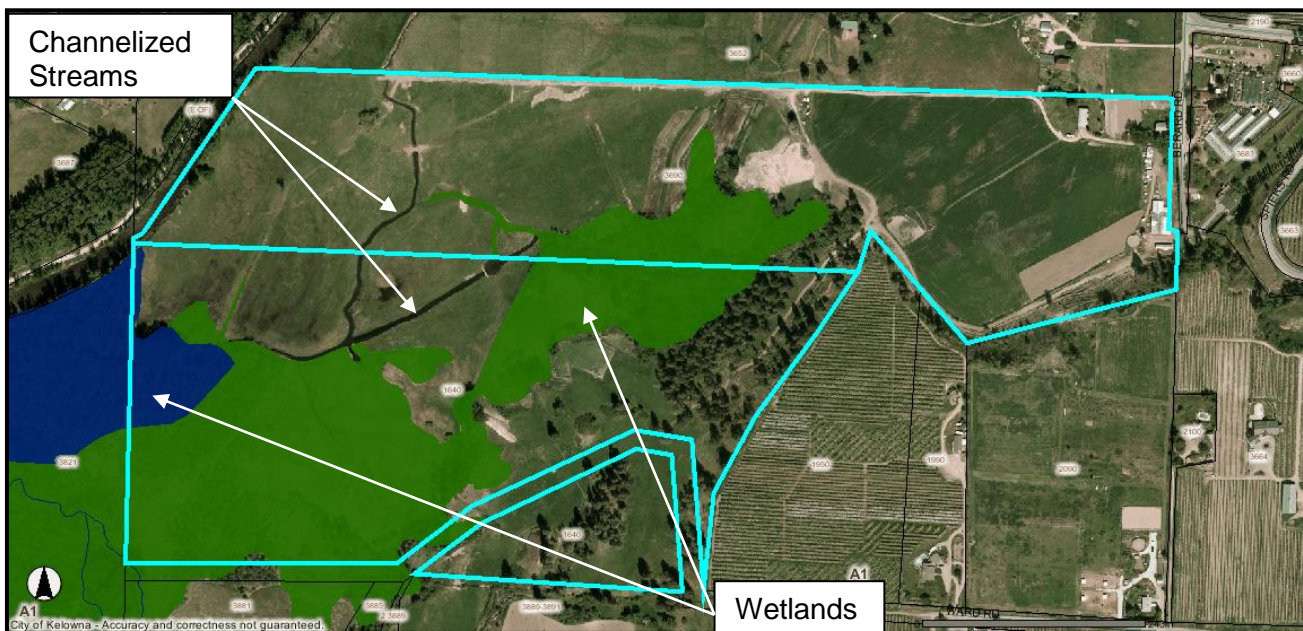
In addition to the Farmersgolf, the applicants are also seeking to augment their existing operations with a concession retailing a variety of products to their customers. The small concession is proposed to be housed in an existing shed and the applicants are proposing to retail a variety of local products to the public (see p. 5 of Application, attached). It is not immediately clear if the applicants seek to retail other products produced outside of Kelowna.

4.2 Site Context

The subject properties are located in Southeast Kelowna and west of Berard Road at its terminus. The farm is comprised of two adjacent properties, one ~22.1 ha (~55 ac) and one ~22.8 ha (~56 acre) for a total of ~45.0 ha. Elevations vary between 349 metres in the west and 392 metres in the east. The southern property is severed by an undeveloped road and the two properties have a FortisGas right-of-way (see Map 1).

Map 1 - Subject Properties - 3690 Berard & 1640 Ward Road

The western edge of the northern subject property is adjacent Mission Creek while the western edge of the southern property is adjacent to Casorso Swamp. The parcels are bounded on the eastern edge by a steep escarpment (East Kelowna).

Map 2 - Wetland Mapping

The soils on the subject property are strongly influenced by the hydrology and hydrogeology in the area. Mission Creek as Okanagan Lakes primary tributary provides for a significant influence on surface and groundwater conditions with spring runoff providing the greatest flows in Mission Creek and the highest water table. This is not altogether surprising given that the subject properties are within the historic Mission Creek floodplain and both Priest and Rumohr Creek and numerous springs are located in the area.

Zoning and land uses adjacent to the property are as follows:

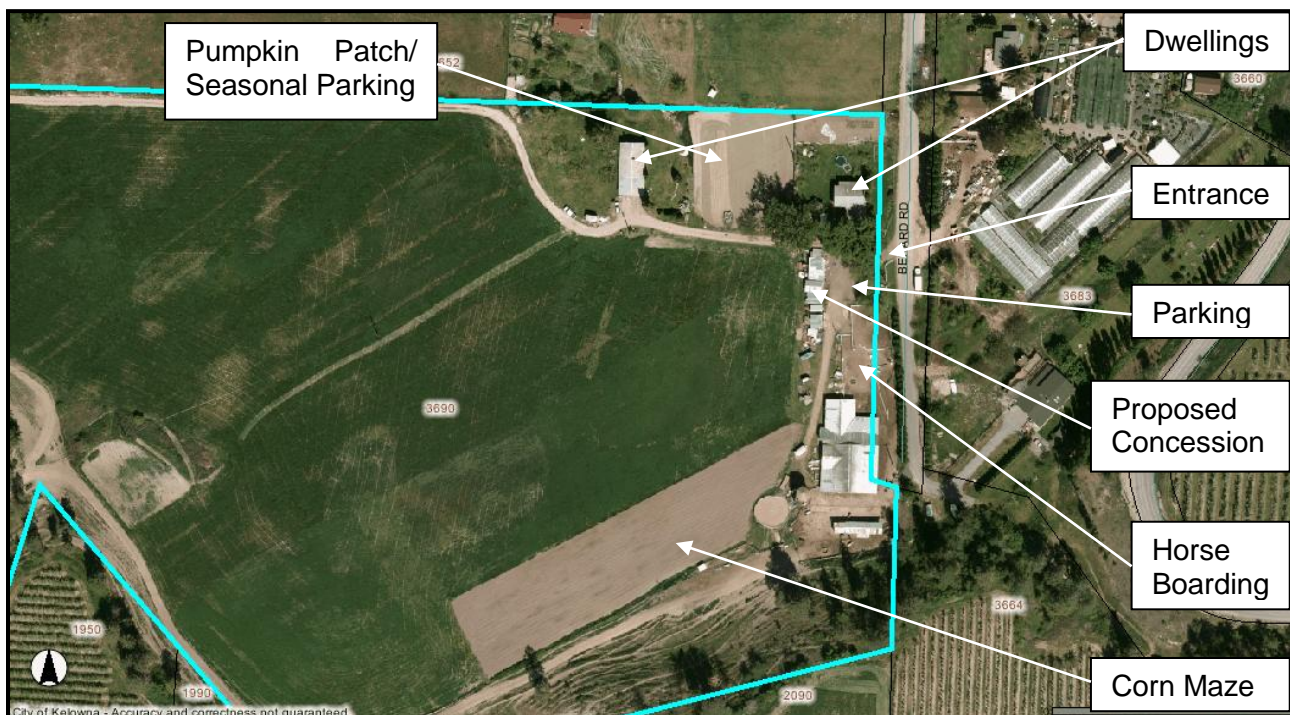
Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Rural/ agricultural
South	A1 - Agriculture	Yes	Rural/ agricultural
East	A1 - Agriculture 1	Yes	Rural/agricultural
West	A1 - Agriculture 1	Yes	Mission Creek / Swamp

According to the Canada Land Inventory, the soils across the subject property vary considerably between Class 2 (Prime) and Class 7 (No Capability). The Class 7 lands are associated with the escarpment while the majority of the land is thought to be Prime (i.e. improvable to Class 3 or better) agricultural land with excess water, low fertility and erosion potential. Undesirable soil structure, stoniness and salinity are thought to be limiting factors in smaller pockets (see attached Land Capability map and legend).

The applicants note that from an agricultural perspective, the subject property is currently used for hay production, pasture for grazing horses and other livestock (e.g. cattle), and the production of corn and pumpkins. The applicants currently operate agri-tourism activities on the farm with a corn maze, hay maze and pumpkin patch in the late fall.

Past uses of the land include being used as a dairy farm, production of silage corn, and pasture for dairy cattle.

Map3 - Homesite



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

5.2 2030 Official Community Plan: Greening Our Future

The subject property has a future land use designation of Resource Protection Area. Relevant policies include:

Objective 5.33 Protect and enhance local agriculture¹.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .5 Agri-tourism, Wineries, Cideries, Retail Sales. Support agritourism uses that can be proven to be in aid of and directly associated with established farm operations. Permit wineries, cideries and farm retail sales (inside and outside the ALR) only where consistent with existing ALC policies and regulations.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land².

Objective 8.8 Reinforce Kelowna's unique identity/sense of place³.

This objective will be achieved by retaining important natural and community features while enhancing our downtown and other urban centres. Policies in the Environment, Arts and Culture, and Review of Development Application Chapters are intended to achieve this objective.

Farm Protection Development Permit Guidelines⁴.

1.2 On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

5.3 City of Kelowna Agriculture Plan

Economic Enhancement Policies⁵

14. Benvoulin Flats - Mission Creek Area. Encourage on-farm drainage improvements for the general Benvoulin Flats - Mission Creek Area and support drainage improvements in the public ditch system to assist on-farm drainage;

¹ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

² City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Economic Development Chapter; p. 8.4.

⁴ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Farm Protection Development Permit Guidelines Chapter; p. 15.3.

⁵ City of Kelowna Agriculture Plan (1998); p. 150 - 152.

29. Integration. Support the establishment of a process to consider, in addition to the promotion of agri-tourism and direct farm marketing businesses within the community, an integrated approach that creates linkages to the cultural and heritage tourism sectors, in terms of marketing an identity of Kelowna.

6.0 Technical Comments

6.1 Development Engineering Department

Development Engineering has no comments at this time. A comprehensive report will be provided at the time of Development Permit application should the ALC agree to the proposed agri-tourism uses.

7.0 Application Chronology

Date of Application Received: April 23, 2013

Agricultural Advisory Committee May 9, 2013

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on May 9, 2013 and the following recommendations were passed:

THAT the Agricultural Advisory Committee recommends that Council support Application No. A13-0008 for 3690 Berard Road / 1640 Ward Road, to obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for two “non-farm uses” within the Agricultural Land Reserve (ALR) to permit the activity of Farmersgolf™ to be carried out in addition to a concession stand for visitors to the farm.

Anecdotal Comments:

The AAC supported the application, but raised concern that Farmersgolf, even if only in name, has the negative connotations associated with typical golf courses. The AAC members also noted that parking could be an issue on the subject property and did not want the parking to overwhelm the site and impact agriculture. AAC recommended that the parking areas not be allowed to become permanent (e.g. paved).

Report prepared by:

Greg Sauer, Environment & Land Use Planner

Reviewed by:

☐

Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion

☐

D. Gilchrist, Acting General Manager, Community Sustainability

Attachments:

Site Photos (4 pages)

Canada Land Inventory - Land Capability and Soil Classification (3 pages)

Subject property/zoning & ALR map (2 pages)

Application including Letters of Support (19 pages)

Photo 1: Existing Sheds/Shelters (Proposed Concession Area)



Photo 2: Pumpkin Patch/Late Season Parking (Between Two Dwellings)

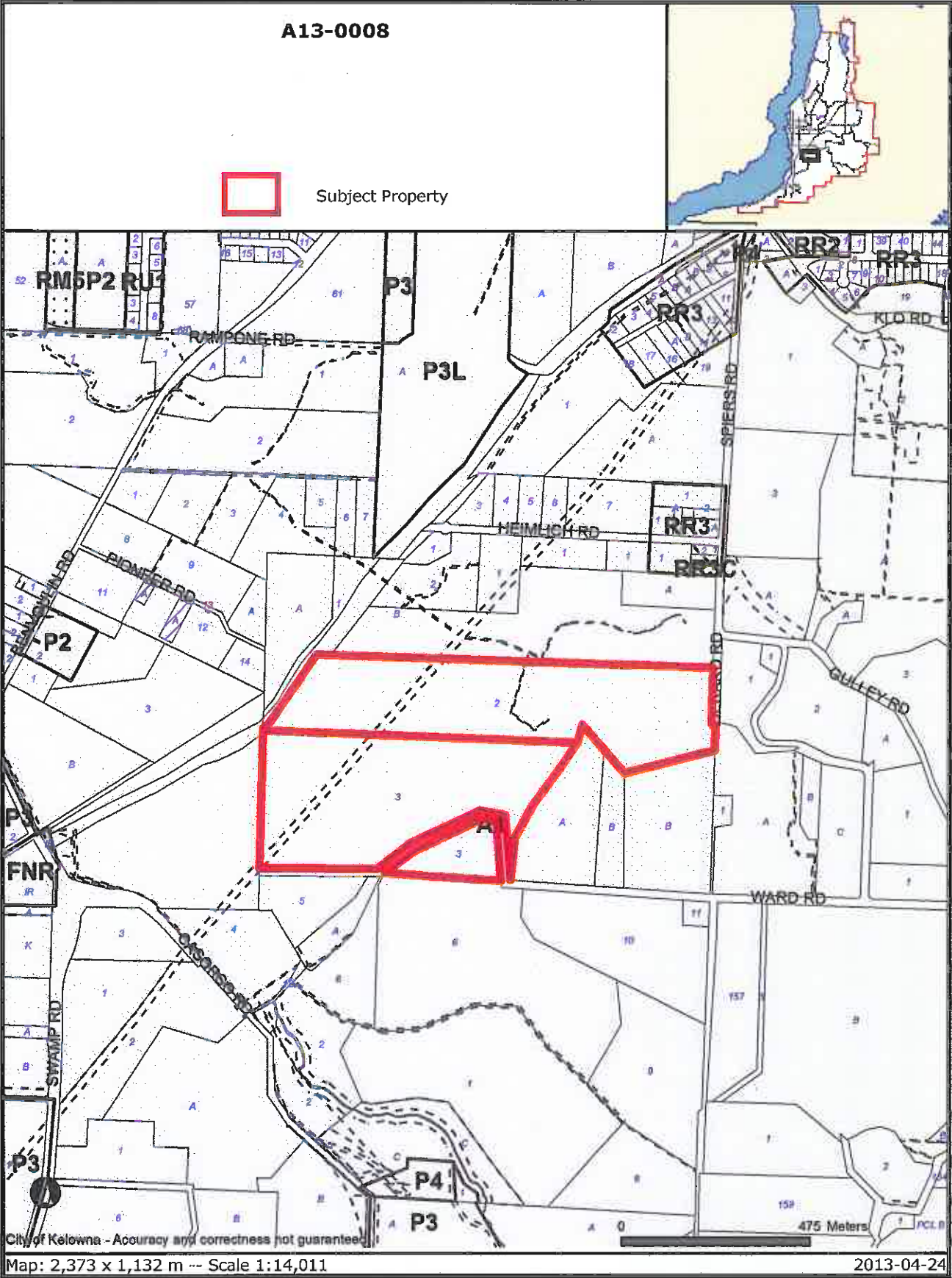


Photo 3: Parking Area (Near Berard Road)

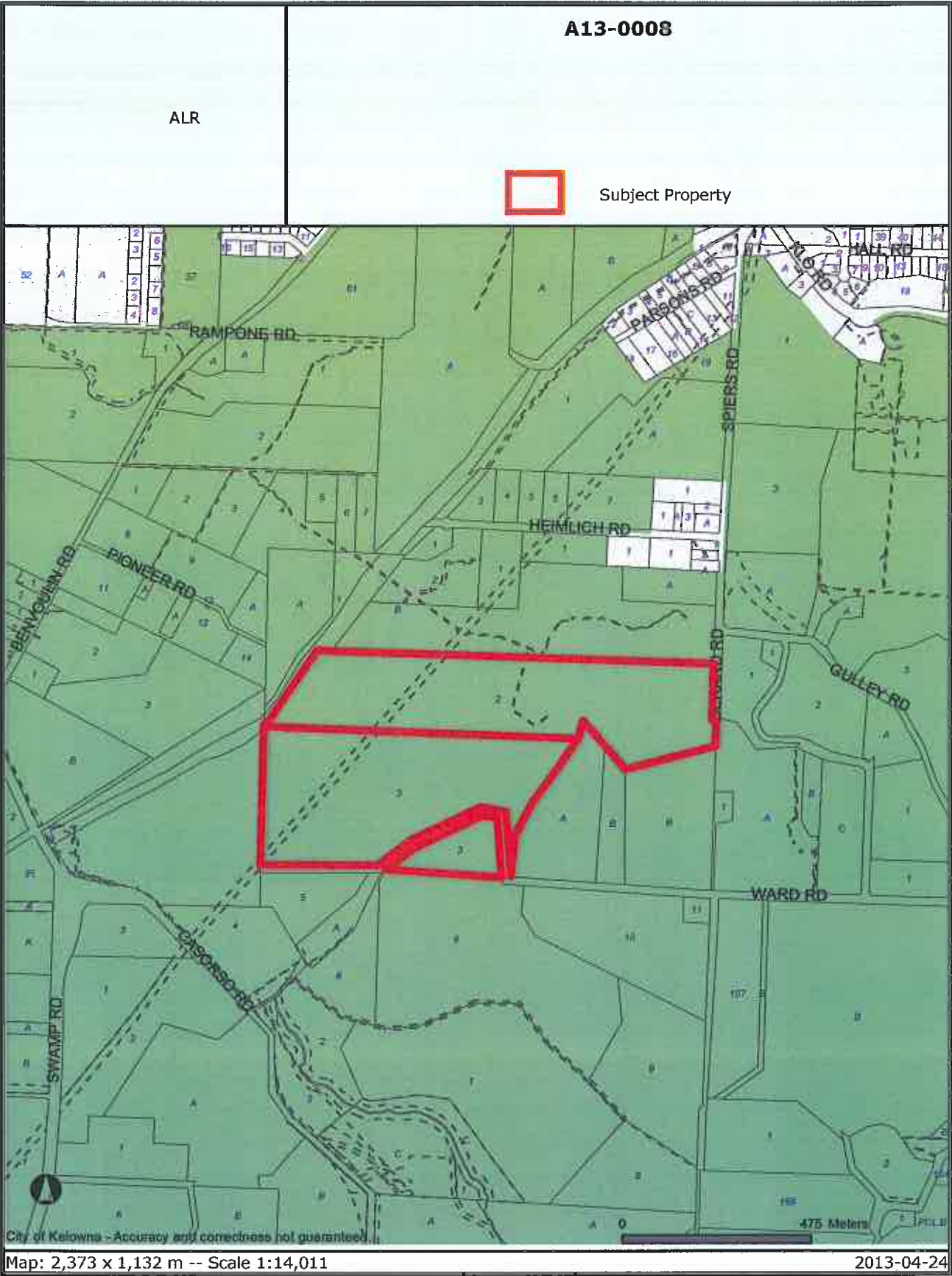


Photo 4: Horse Boarding (near Berard Road)



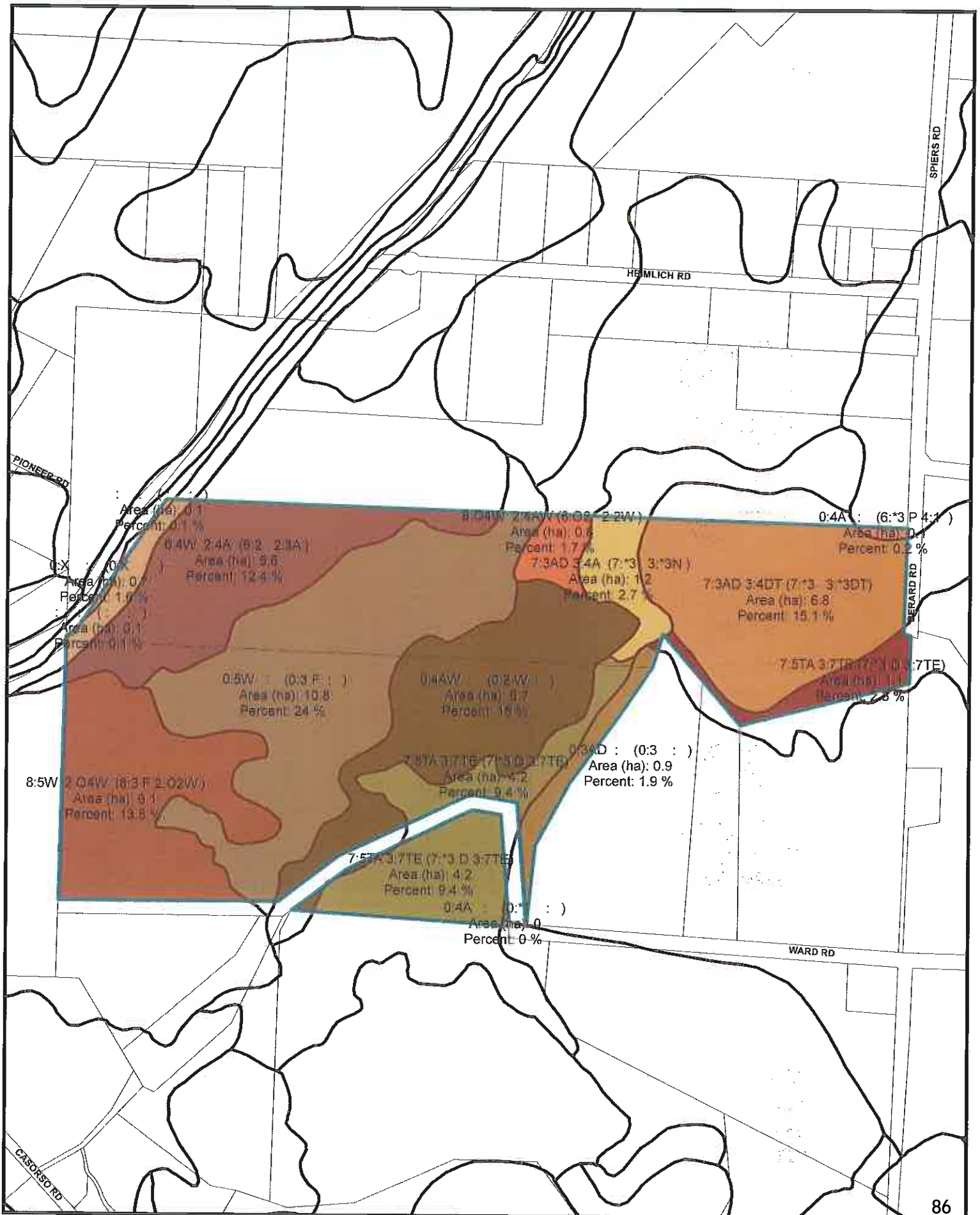


Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.



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The City of Kelowna does not guarantee its accuracy. All information should be verified.

Land Capability = Brown/ Soil Class = Green



Agricultural Capability Classes

1	Land in this Class has no or only very slight limitations that restrict its use for the production of common agricultural crops. Land in Class 1 is level or nearly level. The soils are deep, well to imperfectly drained under natural conditions, or have good artificial water table control, and hold moisture well. They can be managed and cropped without difficulty. Productivity is easily maintained for a wide range of field crops.
2	Land in this Class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both. Land in Class 2 has limitations which constitute a continuous minor management problem or may cause lower crop yields compared to Class 1 land but which do not pose a threat of crop loss under good management. The soils in Class 2 are deep, hold moisture well and can be managed and cropped with little difficulty.
3	Land in this Class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both. The limitations are more severe than for Class 2 land and management practices are more difficult to apply and maintain. The limitations may restrict the choice of suitable crops or affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
4	Land in this Class has limitations that require special management practices or severely restrict the range of crops, or both. Land in Class 4 has limitations which make it suitable for only a few crops, or the yield for a wide range of crops is low, or the risk of crop failure is high, or soil conditions are such that special development and management practices are required. The limitations may seriously affect one or more of the following practices: timing and ease of tillage, planting and harvesting, and methods of soil conservation.
5	Land in this Class has limitations which restricts its capability to producing perennial forage crops or other specially adapted crops. Land in Class 5 is generally limited to the production of perennial forage crops or other specially adapted crops. Productivity of these suited crops may be high. Class 5 lands can be cultivated and some may be used for cultivated field crops provided unusually intensive management is employed and/or the crop is particularly adapted to the conditions peculiar to these lands. Cultivated field crops may be grown on some Class 5 land where adverse climate is the main limitation, but crop failure can be expected under average conditions.
6	Land in this Class is non-arable but capable of producing native and/or uncultivated perennial forage crops. Land in Class 6 provides sustained natural grazing for domestic livestock and is not arable in its present condition. Land is placed in this class because of severe climate, or the terrain is unsuitable for cultivation or use of farm machinery, or the soils do not respond to intensive improvement practices. Some unimproved Class 6 land s can be improved by draining, diking and/or irrigation.
7	Land in this Class has no capability for arable agriculture or sustained natural grazing. All classified areas not included in Classes 1 to 6 inclusive are placed in this class. Class 7 land may have limitations equivalent to Class 6 land but does not provide natural sustained grazing for domestic livestock due to unsuited natural vegetation. Also included are rock land, other non-soil areas, and small water bodies not shown on the maps. Some unimproved Class 7 land can be improved by draining, diking, irrigation, and/or levelling.

Agricultural Capability Subclasses

A & M	Soil moisture deficiency	N	Salinity
C	Adverse climate (excluding precipitation)	P	Stoniness
D	Undesirable soil structure	R	Shallow soil over bedrock and/or bedrock outcroppings
E	Erosion	T	Topography
F	Low fertility	W	Excess water (groundwater)
I	Inundation (flooding by streams, etc.)	S & X	Cumulative and minor adverse conditions

[illegible]

Ron & Colleen McMillan
#1 – 3690 Berard Rd
Kelowna, BC, V1W 4A9
www.mcmillanfarms.ca

April 16, 2013

Attn: Greg Sauer
City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

The following is additional information for the Application by Land Owner form from the Agricultural Land Commission.

PROPOSAL

Request

Ron and Colleen McMillan (McMillan Farms) of #1 – 3690 Berard Rd, Kelowna, requesting approval from the Agricultural Land Commission, under section 20(3) of the Agricultural Land Commission Act, for a non-farm use within the Agricultural Land Reserve to allow the agri-tourism activity called Farmersgolf™.

Background

The McMillan family farm originally began in 1950, when Ross and Jean McMillan (grandparents of Ron McMillan) purchased a small existing dairy operation. With son James, the dairy farm grew into one of Kelowna's largest until it stopped in 1972, when the dairy herd was auctioned off and Ross and Jean retired. Since then, James McMillan continued to farm growing alfalfa hay and boarding horses.

In 2004, Ron and Colleen McMillan relocated from Vancouver back to Kelowna to revive the family farm by offering agri-tourism activities. They have steadily added to the range of

activities which currently including educational hayrides, a pumpkin patch, a corn maze, petting farm, pumpkin sling shot and hay maze. The addition of Farmersgolf™ is planned for 2013.

Maintaining the legacy of a family farm that has been operational for over 60 years is extremely important to the McMillan family; as well, as an agri-tourism facility the farm draws attention to the agricultural history and culture of the community that is of interest to both locals and visitors.

Currently the farm provides various products to the community during the fall. These include over 20 varieties of pumpkins, gourds and decorative corn. While there are many local farms that are growing and selling pumpkins, McMillan Farms is distinct from other local farms due to the range of agricultural products it provides and the number of activities visitors can enjoy. The corn maze, while not unique to the area is the largest and the most challenging. The hayride is by far the most scenic and educational tour of its kind in the Okanagan valley. Also unique to McMillan Farms is the pumpkin slingshot and the hay bale maze.

In 2012-2013, McMillan Farms participated in an Agri-Tourism pilot project with the Central Okanagan Economic Development Commission (<http://www.investkelowna.com/agriculture>). Through this pilot project, we identified a business concept to expand our current agri-tourism activities from May to October to include something very unique to Canada, called Farmersgolf™. This agri-tourism activity originated in the Netherlands in 2000 and has spread across Western Europe and is just now starting to appear in North America. Presently approximately 200 Farmersgolf™ courses exist around the world, with 3 located in Canada, in Nova Scotia, New Brunswick and Ontario.

The activity requires a golf club which uses a Dutch wooden shoe and a small soccer ball. Holes consist of a simple milk pale placed in the ground, which is marked by a flag. The defining feature of Farmersgolf™ is that the game is played on an otherwise unaltered farm. Obstacles and hazards include anything one might find on the farm, including live cows, ditches and barbed wire and, of course, cow plops. It is played over pastures, around livestock, around crops, along roads and hillsides. It makes use of areas of your farm that may not be very productive for a variety of reasons. It also provides customers an opportunity to visit a farm in a fun and educational way, where they see agriculture in action and learn more about where their food comes from. Along the course, customers also have the opportunity to read signage that

provides them information about the farms history, its crops, harvest activity's, livestock information, environmental issues and more. For a farmer, this also provides a fantastic opportunity to earn additional income, which can be re-invested to increase farm production and profitability. McMillan Farms has to date, re-invested to purchase a new tractor, wagons, plastic mulch layer, drip lines and in the future, will hopefully upgrade existing buildings. This all benefits the community by preserving farmland by increasing its viability.



Proposal Description

Operating from May to October, McMillan Farms would operate Farmersgolf™ in conjunction with all existing uses. Highlights of the operation include:

- Course is not fixed and can be changed at any time by simply digging a new hole for a bucket, so no area occupied by only Farmersgolf™. All land is multi-purposed.
- Would not be played through hay, corn, pumpkin or any other crop, but instead around them to avoid damage to crops.
- Educational signage would be posted to provide information on the farm history, crops, farm activities, environmental issues, livestock and more. Visitors learn where food comes from.
- Onsite parking would be limited to a small existing area that accommodates up to 6 cars. Additional parking exists in one pumpkin field, after it has been harvested in September. Additional parking, as required, has been negotiated in the past with a neighbour for short periods and would likely be available in the future. Projections from the farms

business plan shows approximately 1000 visits over 5 months or 50 visits per week. Existing site parking will be able to handle projected visits.



Figure 1: Parking areas



Figure 2: Existing Parking lot

- Guests will require reservations, due to limited amount of equipment (clubs, balls, footwear) available. This will spread customers through-out the day. Some limited drop in times available, if no one participating in the activity at that moment.

- Guests will be required to wear footwear provided by McMillan Farms, to limit the spread of weeds or diseases on and off the farm.
- Hand washing facilities to be provided to limit spread of any potential animal diseases.
- Farmersgolf™ is a franchise and McMillan Farms would own the area rights to the Central Okanagan Regional District area.
- Existing space in the tractor/tool shed will be used for cash registers.
- Operations in June and September will be limited to weekends with hours to be determined. July, August and October, operations will be 7 days a week, hours to be determined.
- A canteen area will operate inside one of the tractor bays in the farms sheds. Beverages and products from local farms will be offered such as:
 - Apple Juice from Function Junction (Cross Orchards) in Kelowna.
 - Honey from Arlo's Honey Farm in Kelowna.
 - Okanagan Lavender and Herb Farm.
 - McMillan Farms pumpkins used to make pumpkin butter, muffins, tarts, cookies, bars and cakes.
 - Plum sauce made from McMillan Farms Italian Plums.
 - Jams and Jellies from Caramoomel's in Kelowna.
 - Jams made from local strawberries and blueberries.
- Washrooms will consist of portable washrooms in shed and near the 5th hole.
- Customers will be required to wear footwear (gumboots, crocks, etc.), to prevent spread of weeds (knap weed, purple loosestrife, etc.) on and off farm.
- McMillan Farms practices sustainable agriculture whenever possible and supports multi-purposing land. For example, one pumpkin field located between the 2 homes on the farm, becomes a parking lot in October after pumpkins are harvested. Most local farms, remove land permanently for parking, whereas it can be sometimes be still used to grow crops as McMillan Farms does.
- McMillan Farms has also included 2 letters of reference:
 - Tracey Fredrickson – Tracey Fredrickson Consulting working with the Central Okanagan Economic Development Commission
 - Peter Weenink – Owner of Farmersgolf™

CURRENT USE OF LANDS

Current uses of the farm include:

- Hayfields, pasture for grazing horses and other animals, corn, pumpkins.
- Some areas unusable as it contain swamps.
- Low lying areas near Mission Creek previously used to harvest summer hay. This is now becoming unusable as it is being flooded year round by Mission Creek, due to no gravel removal by Province of BC.
- Steep hillsides (East Kelowna Escarpment) only suitable for minor grazing.
- Operate corn maze, hay maze, pumpkin patch during the month of October.

Past uses include:

- Dairy farm
- Silage corn
- Pasture areas for dairy cattle

Current Buildings

- 2 houses, equipment shed, old dairy barn used to store hay, tack shops, old milk house.

INTERNET VIDEO LINKS

Nova Scotia:

<http://www.cbc.ca/news/canada/nova-scotia/story/2012/05/17/ns-farmers-golf.html>

Rhode Island:

<http://www.ctnow.com/travel/daytrippers/ctn-farmers-golf-at-manfredi-farms-in-westerly-rhode-island-20120712,0.4359954.story>

PHOTOS FROM McMILLAN FARMS



Figure 3: Hayfield



Figure 4: Lower pasture



Figure 5: Tractor Shed with multipurpose space for retail and canteen

PHOTOS FROM EXISTING FARMERSGOLF™ LOCATIONS



MAPS

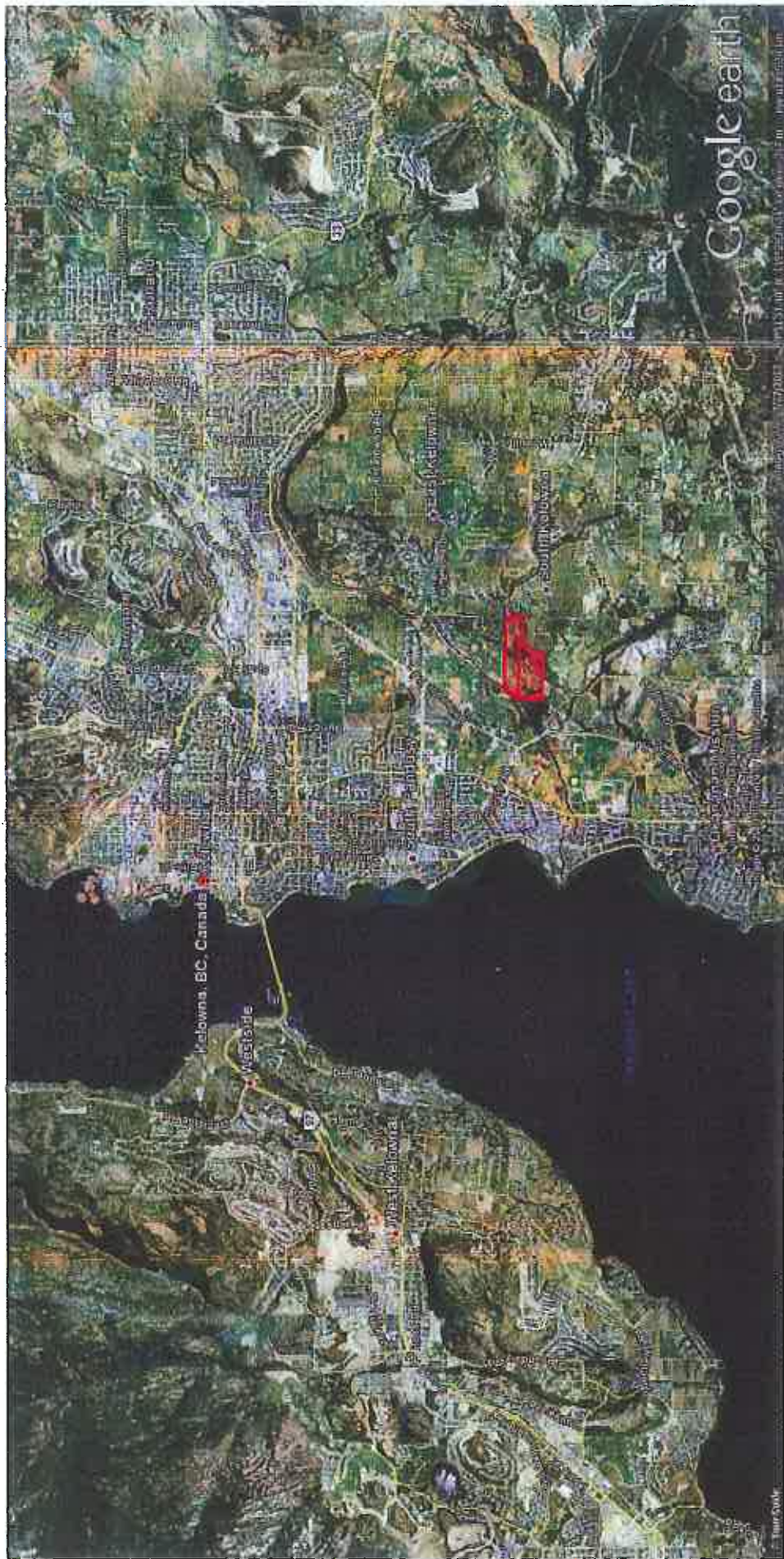


Figure 6: Key Map of McMillan Farms



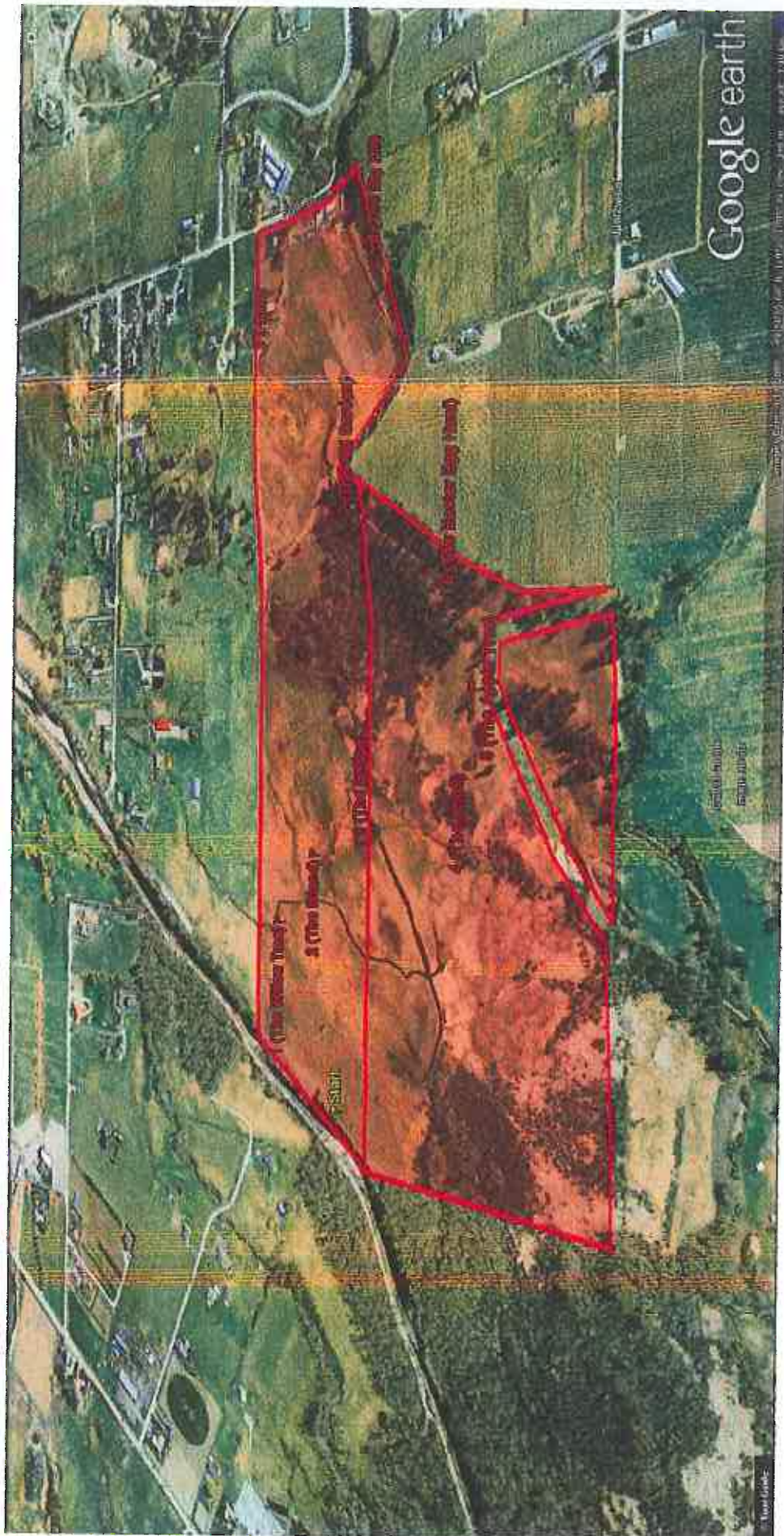
Figure 7: McMullan Farms - 3690 Berard Rd (Lot 2) & 1640 Ward Rd (Lot 3)



Figure 8: McMillan Farms - Current Land Use



Figure 9: Adjacent Land Uses



April 11, 2012

Re: McMillan Farms, Kelowna – Proposed Use of Agricultural Land for Agri-Tourism

To Whom It May Concern:

I am Kelowna-based business consultant who has worked extensively with the Central Okanagan Economic Development Commission over the past 11 years. Since September, 2012 I have been engaged to implement an Agri-tourism Pilot Project on behalf of the Commission aimed at assisting new or expanding agri-tourism operators through the business planning process.

Ron and Colleen McMillan of McMillan Farms are one of four participants selected for this pilot project.

The selection criteria was based on a comprehensive research process that determined what types of agri-tourism experiences held the greatest potential for success in the Central Okanagan, as well as the management skills and abilities of successful agri-tourism operators. (See Report: From Agriculture to Agri-Tourism – http://www.investkelowna.com/sites/default/files/uploads/final_coedc_agriculture_to_agri-tourism.pdf).

A summary of these criteria includes:

- Participants had to own the land where the agri-tourism activity would take place and their concept would be aimed at deriving more value from the land; without disturbing its agricultural integrity or future farming potential.
- The agri-tourism activities would satisfy the interests identified by tourism marketing organizations such as education around sustainable agricultural practices and how food is grown, and draw attention to the history and culture of agriculture locally and its importance to the Regional economy;
- The activities would be “authentic” and “experiential” for a wide age group – “experiences that reflect Okanagan products, geography and our agricultural industry.” The working farm tour was considered a major area of opportunity following the closure of such a facility in the region in 2010, providing “the ability to walk into the orchard, touch and pick the fruit, talk with the farmer and his staff and learn about the farm without getting dirty.”
- Participants in the Agri-Tourism pilot project were also selected for having an appropriate level of business management experience on and off the farm and their willingness to commit up to 100 hours during the project towards the development of their business plan. Each participant also paid \$500 towards the project to support the cost of educational sessions, workbooks etc.

/2

In working extensively with the McMillans over the past several months as a mentor and business planning coach, I believe their passion and commitment to sustainable agricultural practices is the driving force behind both their business objectives and lifestyle. Both Ron and Colleen have jobs off-the-farm and are not dependent on income from their farm to make a living. They did, however, relocate with their three children from the Lower Mainland back to Kelowna in 2004 in order to revive the family farm and continue its 100-year legacy as fourth generation family members.

As an agri-tourism facility, McMillan Farms is open less than two months of the year with Ron taking all his holiday time in this period in order to operate the farm with his family. The farm is popular and well known – attracting thousands of locals and visitors every year for authentic family-oriented activities ranging from tractor rides to a corn maze, hay maze, petting farm and pumpkin patch.

By identifying FarmersGolf as an additional activity for their farm starting in 2013 and having locally-made food products for sale, the McMillans have, in my opinion, identified activities that respect the goals and objectives of agricultural land preservation in the Central Okanagan. At the same time they will be making an important contribution to the local economy through increased tourism activity.

Sincerely,

A handwritten signature in cursive script that reads "Tracey Fredrickson".

Tracey Fredrickson
Business Consultant
#25 – 1865 Begbie Road, Kelowna, BC V1V 2X4
(250) 470-7838
tracey@traceyfredrickson.ca



The Agricultural Land Commission

On behalf of:

Ron & Colleen McMillan |

McMillan Farms

#1 - 3690 Berard Road |

Kelowna BC V1W 4A9

Lievelde 14-03-2013

Dear Sir,

My name is Peter Weenink and at together with my wife Lidy and two sons Johannes and Michiel we have a dairy farm in Holland. On our dairy farm (70 cows and 45 young cows) we produce and sell Gouda farmer cheese, yoghurt, buttermilk.

Some other 20 farms sell our cheese in their farm shops.

Next to the farming we have a shop, restaurant and organise activities for groups.

Some 20 people are working in our company which means about 10 whole jobs.

www.kaasboerderijweenink.nl (Sorry not in English)

How did this come about.

Our example made a lot of followers.. The reason Lidy and I started Farmersgolf Int, our company for promoting and selling Farmersgolf™ .
We also trademarked the game/ sport.
For more information. www.farmersgolf.com

In about 5 years there were over 100 Farmersgolf™ courses in the Netherlands.
Worldwide now almost 200.
A lot of farmers used Farmersgolf™ as a start to create a multifunctional farm and are now very successful in agri-tourism.
At the moment Farmersgolf™ helps us to develop our dairy part of the company and create for both of my sons a good job.

Agri-tourism is generally recognised as necessary for a liveable countryside.
In the near future, because of age and improved producing methods A lot of farmers will stop farming.
For example in our neighbourhood within 15 years more than 50% of the farmers will stop because of age, to small to earn a living or no successors.
This development is taking place in many countries. A lot of farmers want to be active in agri-tourism. The reason Farmersgolf™ is played in over 10 countries and more and more countries like to start.

Farmersgolf™ is perfect for agri-tourism because the farm is the golf course. Pastures can be double used, it is low cost and it can be very profitable.
The copyright and trademark make it possible to make a good spreading and therefore keep it profitable.

In Europe Farmersgolf™ is becoming a sport. In Holland and Germany we have a competition and local and national championships. Incidentally also in other countries.

In Canada Farmersgolf™ is present in Ontario New Brunswick en Nova Scotia
www.bonarlawcommon.com
www.mapletonsorganic.ca
www.hennigars.com

Summarized:

- *Farmersgolf™ helps to keep the countryside liveable by creating jobs
- *Farmersgolf™ helps to keep the countryside liveable because it great fun to play also for locals.
- *Farmersgolf™ is friendly for the environment because the farm is the golf course in a sustainable way
- * Farmersgolf™ gives an excellent opportunity to inform visitors about food, the way it is produced and how farmers live.

- * Farmersgolf™ helps farmers to start or expand agri-tourism, because of its low cost structure and easy way to organise.
- * The copyright and trademark make it possible to make a good spreading and focus on farmers.
- * Being member of Farmersgolf Int, you get colleges in many states and countries you can ask for information.
- * Farmersgolf Int asks members to meet and learn from one another.

These reasons explain why Farmersgolf™ is still growing, everybody wins, nobody loses.

Best Regards
Peter Weenink

Farmersgolf Int

Eimersweg 3
7137 HG Lievelede
The Netherlands

REPORT TO COUNCIL



Date: May 9, 2013

RIM No. 1250-30

To: City Manager

From: Land Use Management, Community Sustainability (BD)

Application: Z10-0013

Owner: Terry John Oxley

Address: 546 McWilliams Road

Applicant: Terry John and Diane Marie Oxley

Subject: Rezoning Application, Extension Request

Existing Zone: RU1 - Large Lot Housing

Proposed Zone: RU1c - Large Lot Housing with a carriage house

1.0 Recommendation

THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10325, Z10-0013, Lot 7, Section 26, Township 26, ODYD, Plan 29389, 546 McWilliams Road, be extended from May 18, 2012 to May 18, 2013;

AND THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10325, Z10-0013, Lot 7, Section 26, Township 26, ODYD, Plan 29389, 546 McWilliams Road, be extended from May 18, 2013 to May 18, 2014.

2.0 Purpose

To extend the date for adoption of the Zone Amending Bylaw from May 18, 2012 to May 18, 2013 and to further extend the date for adoption of the Zone Amending Bylaw from May 18, 2013 to May 14, 2014.

3.0 Land Use Management

Section 2.12.1 of Procedure Bylaw No. 10540 states that:

In the event that an application made pursuant to this bylaw is one (1) year old or older and has been inactive for a period of six (6) months or greater:

a) The application will be deemed to be abandoned and the applicant will be notified in writing that the file will be closed;

- b) Any bylaw that has not received final adoption will be of no force and effect;
- c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10325 received second and third readings on May 18, 2010 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional twelve (12) months in order to complete the recommendations for final adoption. This project remains unchanged and is the same in all respects as originally applied for.

It is noteworthy that this application pre-dated the September 2012 change in the City's secondary suite process and this extension report reflects the current terminology. The property owner is now able to proceed with the recommendations for adoption and has confirmed that the carriage house is unoccupied. Given these factors, the Land Use Management Department recommends Council consider the request for an extension favourably; however, given the length of time that has lapsed, this will be the last extension that Staff will favourably support.

Report prepared by:

Birte Decloux, Land Use Planner
/hb

Reviewed by:

☐

Danielle Noble, Manager, Urban Land Use

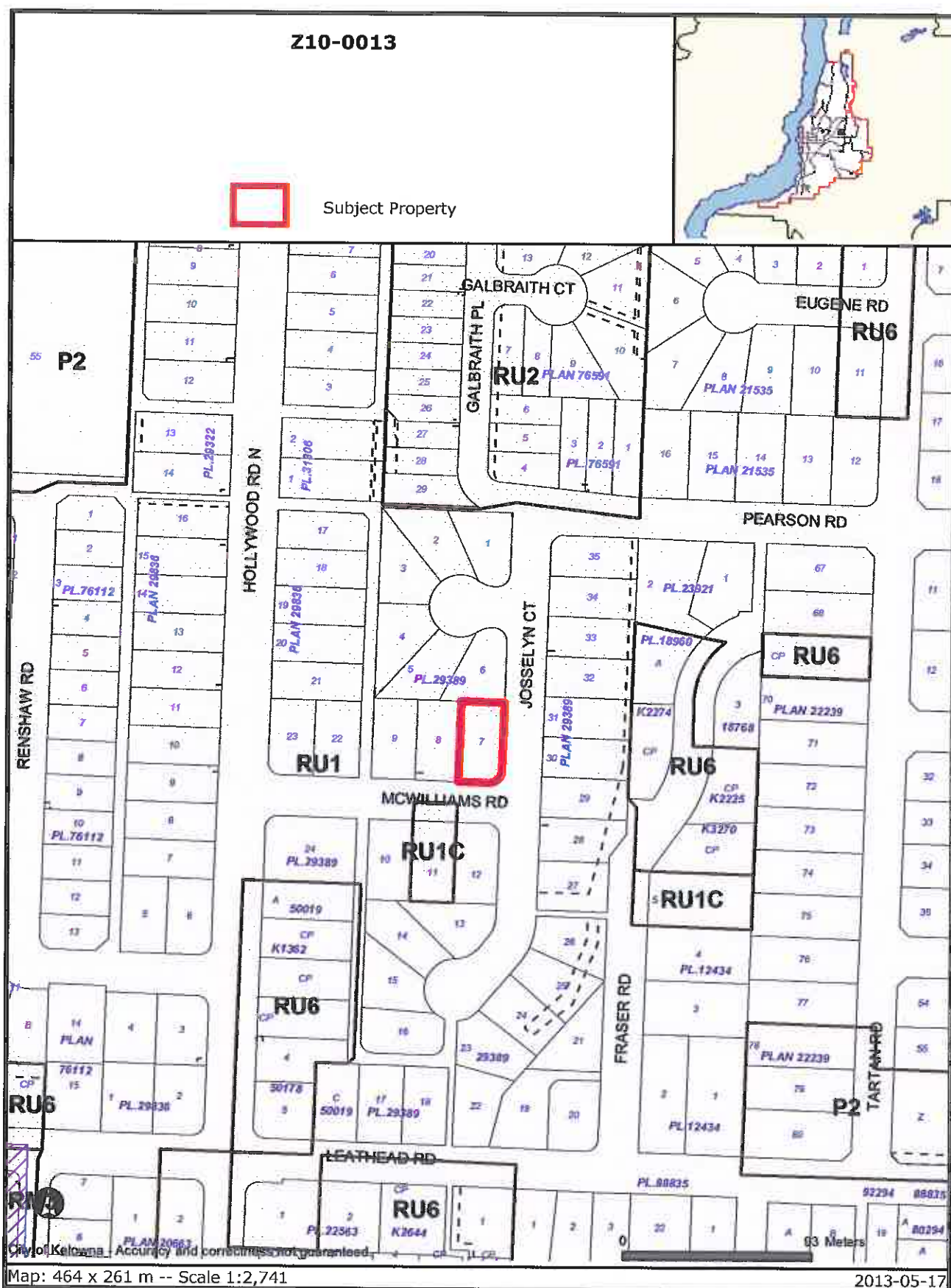
Approved for Inclusion

☐

Doug Gilchrist, Acting General Manager, Community Sustainability

Attachments:

Site Plan



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

Report to Council



Date: May 14, 2013

Rim No: 0600-10

To: City Manager

From: City Clerk

Subject: BL10783- Z12-0059 - Marianne Hill (Ed Guy) - 250 and 260 Lake Avenue - (From the RU1 - Large Lot Housing zone to the RU3 - Small Lot Housing zone)
Report Prepared by: Tania Tishenko

Recommendation:

THAT Bylaw No. 10783, being Z12-0059 Marianne Hill (Ed Guy) - 250 and 260 Lake Avenue be adopted.

Purpose:

To consider adoption of Bylaw No. 10783, being Z12-0059 Marianne Hill (Ed Guy) - 250 and 260 Lake Avenue in order to rezone from RU1 - Large Lot Housing zone to the RU3 - Small Lot Housing zone.

Background:

Bylaw No. 10783 received second and third readings by Council on December 11, 2012. A copy of the Bylaw is attached.

As the following conditions of adoption have been met, the Bylaw can now be adopted:

1. Ministry of Transportation and Infrastructure Approval;
2. Tree Protection Plan for Heritage London Plane Tree;
3. Development Engineering Branch;
4. Registration of Building Envelope Covenant.

Submitted by:

S. Fleming, City Clerk

CITY OF KELOWNA
BYLAW NO. 10783
Z12-0059 - Marianne Hill
250 & 260 Lake Aveune

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 5, Block D, District Lot 14, ODYD, Plan 2220 and Lot 6, Block D, District Lot 14, ODYD, Plan 2220 located on Lake Avenue, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU3 - Small Lot Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 26th day of November, 2012.

Considered at a Public Hearing on the 11th day of December, 2012.

Read a second and third time by the Municipal Council this 11th day of December, 2012.

Approved under the Transportation Act this 28th day of January, 2013.

R.M. Clifford
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Report to Council



Date: May 13, 2013

Rim No: 0600-10

To: City Manager

From: City Clerk

Subject: BL10804- TA12-0012

Report Prepared by: Tania Tishenko

Recommendation:

THAT Bylaw No. 10804, being TA12-0012 be adopted.

Purpose:

To consider adoption of Bylaw No. 10804, being TA12-0012 in order to update the Zoning Bylaw.

Background:

Bylaw No. 10804 received second and third readings by Council on March 12, 2013. A copy of the Bylaw is attached.

As the following conditions of adoption have been met, the Bylaw can now be adopted:

1. Ministry of Transportation and Infrastructure Approval.

Submitted by:

S. Fleming, City Clerk

CITY OF KELOWNA

BYLAW NO. 10804

Text Amendment No. TA12-0012 -Amendment to the City of Kelowna Zoning Bylaw No. 8000 - Care Centre Text Amendments

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that City of Kelowna Zoning Bylaw No. 8000 be amended as follows:

1. THAT Section 2 - Interpretation, 2.3.3 be amended as follows:

a) deleting the definition for **CARE CENTRE, MINOR** that reads:

“**CARE CENTRE, MINOR** means an establishment licensed as required under the *Community Care and Assisted Living Act* intended to provide care, educational services, and supervision to no more than 8 children.”

and replacing it with:

“**CHILD CARE CENTRE, MINOR** means an establishment licensed as required under the *Community Care and Assisted Living Act* intended to provide care, educational services, and supervision to no more than 8 children. The care must be provided by a principal resident that resides at the dwelling for more than 240 days of a year.”

b) deleting the definition for **CARE CENTRE, MAJOR** that reads:

“**CARE CENTRE, MAJOR** means an establishment licensed as required under the *Community Care and Assisted Living Act* intended to provide care, educational services, and supervision for more than 8 children.”

and replacing it with:

“**CHILD CARE CENTRE, MAJOR** means an establishment licensed as required under the *Community Care and Assisted Living Act* intended to provide care, educational services, and supervision for more than 8 children.”

c) deleting the definition for **GROUP HOME, MAJOR** that reads:

“**GROUP HOME, MAJOR** means a care facility licensed as required under the *Community Care Facility Act* to provide room and board for more than 6 residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision, but does not include boarding or lodging houses or temporary shelter services. A Housing Agreement pursuant to Section 905 of the *Local Government Act* filed in the land title office on the subject property is required as a condition for a group home use.”

and replacing it with:

“**GROUP HOME, MAJOR** means a care facility licensed as required under the *Community Care and Assisted Living Act* to provide room and board for more than 6 residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision, but does not include boarding or lodging houses or temporary shelter services.”

- d) deleting the definition for **GROUP HOME, MINOR** that reads:

"GROUP HOME, MINOR means the use of one dwelling unit as a care facility licensed as required under the *Community Care Facility Act* to provide room and board for not more than 6 residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision. A group home, minor may include, to a maximum of four, any combination of staff and residents not requiring care. The character of the use is that the occupants live together as a single housekeeping group and use a common kitchen. This use does not include boarding or lodging houses or temporary shelter services. A Housing Agreement pursuant to Section 905 of the *Local Government Act* filed in the land title office on the subject property is required as a condition for a group home use."

and replacing it with:

"GROUP HOME, MINOR means the use of one dwelling unit as a care facility licensed as required under the *Community Care and Assisted Living Act* to provide room and board for not more than 6 residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision. A group home, minor may include, to a maximum of four, any combination of staff and residents not requiring care. The character of the use is that the occupants live together as a single housekeeping group and use a common kitchen. This use does not include boarding or lodging houses or temporary shelter services."

2. Deleting all references to **"CARE CENTRE, MINOR"** and replacing it with **"CHILD CARE CENTRE, MINOR"**;
3. Deleting all references to **"CARE CENTRE, MAJOR"** and replacing it with **"CHILD CARE CENTRE, MAJOR"**;
4. AND THAT Section 6 - General Development Regulations, 6.9 Housing Agreements, 6.9.1, 6.9.2 and 6.9.3 consecutively be deleted in their entirety that reads:

"6.9.1 The Development Officer may recommend to Council that a housing agreement pursuant to the *Local Government Act*, as a condition of approval for special needs housing, contain contractual arrangements as to any, or all, of the following:

- (a) the use of the lot in relation to any existing or proposed building or structure including the preservation of buildings, structures and environmental setbacks;
- (b) the occupancy, form of tenure, availability, administration, management and rent provisions, of the housing units;
- (c) the timing of the development; and
- (d) such other conditions as may be considered reasonable under the circumstances.

6.9.2 Increases in the maximum density are permitted to the density specified in the RM2, RM3, RM4, RM5, RM6 and C4 zones provided:

- (a) the owner enters into a housing agreement satisfactory to the City of Kelowna; and
- (b) such public benefit, determined by the City of Kelowna, may include affordable or special needs housing for sale or rental at below market rates to qualifying purchasers or tenants or, amenities or amenity improvements to public spaces or community facilities.

6.9.3 All agreements entered into pursuant to Section 6.9 shall run with the land as a priority charge against the title of the subject lands at the Land Title Office.”

5. AND THAT Section 8 - Parking and Loading, Table 8.1 Parking Schedule under Community, Recreational and Cultural be amended by deleting the following:

Care Centres, Intermediate Care Centres, Major Care Centres, Minor	1 per 10 children, plus 1 per 2 employees on duty; minimum of 4
---	--

and replacing it with:

Child Care Centre, Major	1 per 10 children, plus 1 per 2 employees on duty; minimum of 4
Child Care Centre, Minor	2 parking spaces plus the required parking for the corresponding principal dwelling unit.

6. AND THAT Section 8 - Parking and Loading, Table 8.2 Loading Schedule, be amended by deleting the following:

Care Centres, Minor Care Centres, Intermediate Care Centres, Major	1 car loading space 2 car loading space 3 car loading space
---	---

and replacing it with:

Child Care Centre, Major	For 9 - 15 children 0 car loading space For 16 - 25 children 0 car loading space For 26 or more children 1 car loading space
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7. AND THAT Section 12- Rural Residential Zones, 12.1 RR1 - Rural Residential 1/RR1c - Rural Residential 1 with Carriage House, 12.1.3 Secondary Uses be amended by deleting “(d) care centres, intermediate” and replacing it with “(d) child care centres, minor”;

8. AND THAT Section 12 - Rural Residential Zones, 12.2 RR2 - Rural Residential 2/RR2c - Rural Residential 2 with Carriage House, 12.2.3 Secondary Uses be amended by deleting “(b) care centres, intermediate” and replacing it with “(b) child care centre, minor”;

9. AND THAT Section 12 - Rural Residential Zones, 12.3 RR3 - Rural Residential 3/RR3c - Rural Residential 3 with Carriage House, 12.3.3 Secondary Uses be amended by deleting “(b) care centres, intermediate” and replacing it with “(b) child care centre, minor”;

10. AND THAT Section 13 - Urban Residential Zones, 13.8 RM2 - Low Density Row Housing/RM2h - Low Density Row Housing (Hillside Area), be amended by:

- a) by deleting under 13.8.3 Secondary Uses the following:
 “(a) care centres, intermediate
 (b) home based business, minor” and replacing it with
 “(b) child care centre, minor
 (c) home based business, minor”;

- b) by deleting from **13.8.6 Development Regulations** (a) the following sentence “,except it is 0.55 with a housing agreement pursuant to the provisions of Section 6.9.” after the words “The maximum floor area ratio is 0.5”
11. AND THAT Section 13 - Urban Residential Zones, **13.9 RM3 - Low Density Multiple Housing, 13.9.6 Development Regulations** (a) be amended by deleting the words “, except it is 0.55 with a housing agreement pursuant to the provisions of Section 6.9.” after the words “The maximum floor area ratio is 0.5.”
 12. AND THAT Section 13 - Urban Residential Zones, **13.10 - RM4 - Transitional Low Density Housing, 13.10.6 Development Regulations** (a) be amended by deleting the words “, except it is 0.75 with a housing agreement pursuant to the provisions of Section 6.9.” after the words “The maximum floor area ratio is 0.65.”
 13. AND THAT Section 13 - Urban Residential Zones, **13.11 - RM5 - Medium Density Multiple Housing, 13.11.6 Development Regulations** (a) be amended by deleting the words “, except it is 1.2 with a housing agreement pursuant to the provisions of Section 6.9.” after the words “The maximum floor area ratio is 1.1.”
 14. AND THAT Section 13 - Urban Residential Zones, **13.12 - RM6 - High Rise apartment Housing, 13.12.6 Development Regulations** (a) be amended by deleting the words “or 0.1 with a housing agreement pursuant to the provisions of Section 6.9.” after the words “except that it may be increased by 0.1 for each additional 10% increment of open space above 50% of open space.”;
 15. AND THAT Section 14 - Commercial Zones, **14.4 C4 - Urban Centre Commercial/ C4rls - Urban Centre Commercial (Retail Liquor Sales)/ C4lp - Urban Centre Commercial (Liquor Primary)/C4lp/rls - Urban Centre Commercial (Liquor Primary/Retail Liquor Sales); 14.4.5 Development Regulations (a) Floor Area Ratio:** be amended by deleting in its entirety subparagraph 2.i. that reads as follows:

“i. Where a housing agreement exists pursuant to the provisions of Section 6.9, a bonus of 0.1 may be added to the floor area ratio;”
 16. AND THAT Section 14 - Commercial Zones, **14.7 C7 - Central Business Commercial/ C7rls - Central Business Commercial (Retail Liquor Sales)/ C7lp - Central Business Commercial (Liquor Primary)/C7lp/rls - Central Business Commercial (Liquor Primary/Retail Liquor Sales), 14.7.3 Secondary Uses** be amended by deleting “(c) care centres, intermediate” and renumbering subsequent subparagraphs.
 17. AND THAT Schedule “B” - Comprehensive Development Zones, **CD1 - Comprehensive Development One; 1.3 Secondary Uses** be amended by deleting “(a) care centres, intermediate” and replacing it with “(a) child care centre, minor”.
 18. AND THAT Schedule “B” - Comprehensive Development Zones, **CD2 - Kettle Valley Comprehensive Residential Development; 1.3 Secondary Uses** be amended by deleting “(a) care centres, intermediate” and replacing it with “(a) child care centre, minor”.
 19. AND THAT Schedule “B” - Comprehensive Development Zones, **CD10 - Heritage Cultural; 1.3 Secondary Uses** be amended by deleting “(b) care centres, intermediate” and replacing it with “(b) child care centre, minor”.

20. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 25th day of February, 2013.

Considered at a Public Hearing on the 12th day of March, 2013.

Read a second and third time by the Municipal Council this 12th day of March, 2013.

Approved under the Transportation Act this 9th day of March, 2013.

Blaine Garrison

Adopted by the Municipal Council of City of Kelowna on the

Mayor

City Clerk

Report to Council



Date: May 6, 2013

RIM #: 0610-51

To: City Manager

From: Doug Gilchrist, Acting General Manager Community Sustainability

Title: Development Application Process Review- Final Report and Recommendations

Report Prepared by: Ryan Smith, Acting Manager - Land Use Management

Recommendation:

THAT Council receives, for information, the Report from the Acting General Manager, Community Sustainability dated May 6, 2013 with respect to the Development Application Process Review;

AND THAT Council endorses the implementation of the recommendations contained in the Development Application Process Review Report dated April 29, 2013 as attached to the Report from the Acting General Manager, Community Sustainability dated May 6, 2013, as budgets and resourcing permit.

Purpose:

To inform Council of the review undertaken by staff to identify opportunities to improve the City's development process and to receive Council's endorsement of the report and associated recommendations.

Background:

In the interest of delivering on the City of Kelowna's objective of being the BEST mid-sized City in North America a number of important business improvement initiatives are currently being undertaken.

This effort reinforces two of Council's strategic priorities (identified in Council's priority framework "Moving Opportunities Forward" 2012-2014):

- 1) **Focus on Results** - Council will ensure Kelowna progresses towards its community goals through innovation.
- 2) **Deliver on our Plan** - Council will work with citizens, partners and applicants to move opportunities forward that create value for the community.

A comprehensive review and rethink of how development processes are delivered by the City was also a key priority recommended in the City's 2012 Core Services Review and a highly ranked item in the 2012 City of Kelowna Business Process Review.

The City's development application processes have been in place for a considerable time with only minor updates. However, over time, additional regulation has been progressively added as circumstances have required. The sources of new regulation can be traced back to a variety of factors including; changes in responsibilities from higher levels of government, reactions to citizen concerns and the perception of negative impacts from some forms of development. This has gradually contributed to creating a challenging and sometimes lengthy development environment. In the City's primary role as a regulator it is important to periodically review what is being regulated and how we regulate it in order to ensure a balance between regulation and facilitation is achieved.

To date the project team has:

Consulted

- Completed a visioning session in order to identify the most important components of the development process to all stakeholders.
- Reviewed previous development application process evaluations - completed in 2007 and 2012.
- Completed detailed in-person interviews with 14 past customers and more than 30 staff.
- Deployed an online survey to UDI and CHBA membership which received 20 responses.
- Solicited comments from a suggestions/issues box.

Analyzed

- Compiled and sorted all feedback into categories.
- Ranked issues identified through the interviews (based on items identified in the visioning session).
- Completed research on best practices across Canada.

Developed Solutions

- Developed recommendations for improvement.
- Drafted the final report and reviewed with City stakeholders.
- Circulated final report to external stakeholder groups.

Provided that Council endorses the DAPR report, the next steps for the project are as follows:

1. Consider realignments to departmental structure consistent with recommendations of the DAPR.
2. Assign project lead for Development Application Process Review implementation.
3. Create a 1 yr. work plan and project charter for implementation.
4. Deliver on year 1 work plan.
5. Report back to Council and stakeholders annually regarding implementation progress.

As necessary, future amendments to existing bylaws, regulations and Council policies linked to this review will be brought forward to a public meeting for consideration.

Internal Circulation:

Director of Infrastructure Planning
Director of Policy and Planning
Director of Development Services
Director of Civic Operations
Urban Land Use Manager
Environment and Land Use Manager
Director of Communications

External Agency/Public Comments:

External industry associations and customers have been surveyed and consulted during the Development Application Process Review and have been circulated on the final version of the report.

Personnel Implications:

The recommendations of the Development Application Process Review report are to be implemented by re-purposing existing resources and using temporary contracted specialists where necessary. In addition, current vacant positions in the Community Sustainability Division will be reexamined in 2014 to support implementation initiatives.

Legal/Statutory Procedural Requirements:

Recommendations will need to be implemented in a way which complements and respects the provincial regulatory requirements. These include the Local Government Act, Community Charter, BC Building Code, Safety Standards Act, Land Title Act and Strata Property Act.

Existing Policy:

Existing policy/regulating documents that may be impacted by the results of the Development Process Review are:

- a) Official Community Plan (Review work already underway)
- b) Subdivision and Development Servicing Bylaw (*Priority Area identified by the DAPR)
- c) Development Application Procedures Bylaw (Recent review completed, amendments to be performed as necessary)
- d) Zoning Bylaw (*Priority Area identified by the DAPR)

Financial/Budgetary Considerations:

To date, this initiative has been completed with no additional financial resources. As the implementation plan develops, future costs will be requested through the standard budgeting process.

Considerations not applicable to this report:

Legal/Statutory Authority: N/A

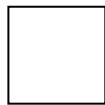
Communications Comments: N/A

Alternate Recommendation: N/A

Submitted by:

D. Gilchrist, Acting General Manager of Community Sustainability

Approved for inclusion:



cc: *Director of Infrastructure Planning*
Director of Policy and Planning
Director of Development Services
Director of Civic Operations
Director of Corporate Services
Urban Land Use Manager
Environment and Land Use Manager
Director of Communications

Key Messages

City Staff have completed the Development Application Process Review report.

The DAPR Report recommends improvements (process and structural) do a number of different components of the development application process.

A dedicated support function is required to ensure on-going accountability for implementation of DAPR report recommendations.

Implementation can begin as soon as Council has endorsed the DAPR Report.

Development Application Process Review

City of Kelowna

April 29, 2013

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4
TEL 250 469-8626
FAX 250 862-3349
kelowna.ca

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Executive Summary

History

The City of Kelowna has initiated this Development Application Process Review (“DAPR”) in response to recommendations from the 2012 Core Services Review, the 2012 Business Processes Review, Council comments, Citizen Survey and industry feedback. All sources recognized that the existing Development Application Process is a high priority in the community and could be improved. The primary underlying goal is to move from a regulatory based environment to a facilitation model that focuses on performance goals, solution-oriented decision making and improved communication with stakeholders including the Community, and applicants. This goal recognizes the important balance between being a regulator of safe, efficient, sustainable, high quality development and acting as a facilitation resource to the City’s development clients.

The scope of the Development Application Process Review was not restricted to large development. It examined processes common to all development from two lot subdivisions to secondary suites, new home construction, mid and high-rise multi-family development and Area Structure Plans. The ‘customer’ is therefore not restricted to corporate developers, but also captures first time applicants and other stakeholders participating in the process including the general public.

The City of Kelowna has previously (in 2007 and 2012) reviewed portions of the development application process. While there have been some successes, the resulting recommendations have only been partially implemented due, in part, to a limited priority being assigned to the project, no accountability structure being recognized in the implementation plan, and an unrealistic/uncoordinated implementation strategy. This report will make recommendations for clear and focused implementation strategy to follow through on the recommendations.

For clarity, Phase I of this initiative will result in high level recommendations, by category, (contained in this report) and Phase II will be a detailed, resourced, implementation plan.

The Vision/Objectives

This process review began by taking development process stakeholders from the City’s staff through a customer/stakeholder oriented visioning/objectives session, to help identify the essential needs of all customers in the development process. The objectives derived from this session were later used to evaluate feedback obtained through internal and external stakeholder interviews.

The Consultation Process

During the stakeholder interview phase of the project, in-person interviews were completed with more than 30 staff and 13 members of the development community. The development community was also circulated an online survey which garnered an additional 20 responses. The resulting feedback was categorized by theme and ranked in a matrix. The matrix criteria were weighted towards issues that had the largest customer service impact and thus the most significant benefit if improved.

The Research Process

The development processes of some of the most exemplary municipalities in BC, Alberta, and Ontario were then examined. This served to help benchmark Kelowna's existing practices, pinpoint areas in need of improvement, and identify improvements that would be practical to implement. All of which are to be consistent with Kelowna's Corporate Vision of becoming North America's best mid-sized City.

The Recommendations and Implementation Plan

Informed by the City's corporate vision and best practices research, the DAPR team created a suite of recommendations aimed at improving, not just the development process, but the culture associated with the development process. The issues and recommendations are organized according to the following categories:

- Objectives, Vision and Culture
- Structure
- Accountability
- Pre-Application/"One Window Service" Centre
- Application Intake, File Management, Customer Communication
- Website, Electronic File Management (process automation)
- Community Communications
- "Outside the Box"

Many of the recommendations for improvement are foundational customer service practices which will help to build the capacity of the development process in order to allow for more significant improvements and to promote innovation. It is also worth noting that many of these proposed improvements have been identified in the previous reviews but were not formally implemented. The exception to this is the section which focuses on Community Communications. This aspect of the development application process connects the application process to the community. Given the many communications improvements over the past decade that are the result of new technology, both Council and staff identified this as an area of opportunity for improvement. It is recommended that a comprehensive plan for community communications including community notification, input and file tracking occur in an early phase of implementation.

The report concludes with several recommendations including: on-going monitoring (measuring success) and accountability to ensure a strong and consistent implementation. In order to ensure accountability and resourcing for implementation, it is recommended that a Development/Business Process Improvement function be created to implement improvements on an on-going basis. This function would report to the GM of Community Sustainability and exist until the recommendations of the DAPR report are implemented.

Also recommended is a new function or prioritization process for resources to improve capacity for on-going strategic planning, special projects and policy implementation related to current/emerging planning and development issues.

The implementation of the recommendations in this report will be guided by a new project charter which will be created after the endorsement of this report. The DAPR Team has recommended that improvements initiated in Year 1 should target the following themes:

- Structure of Stakeholder Departments
- Applicant Communication and File Management
- Accountability
- Community Communications
- Pre-Application Process Improvements

1.0 Introduction, Objectives and Methodology of the Review

1.1 Introduction

A comprehensive review of how development processes are delivered by the City of Kelowna was a key priority recommended in the City's 2012 Core Services Review (Acton) and a highly ranked item in the City's 2012 Business Process Review.

The City's development processes have been in place for a considerable time with only minor updating. New regulation has been progressively added to the process as circumstances have required it. The sources of new regulation can be traced back to a variety of factors, including downloading from higher levels of government, reaction to citizen concerns and the perception of negative impacts from some forms of development. Additional layers of regulation have gradually contributed to a development and business environment that leans more towards regulation than facilitation. While both are necessary elements of the development process, it is important to revisit the balance between them from time to time.

1.2 Project Scope

This project reviewed the City's development processes from the Pre-Application Development Inquiry stage to the Building Permit Occupancy stage. This scope spans the entire development process. Also included were any bylaws or online systems related to the operation of the development process.

1.3 Objectives

1.3.1 Objective Identification - Facilitated Workshop

Through a facilitated workshop (with representation from all City stakeholder departments) aimed at pinpointing the objectives for a high performing Development Process the DAPR team identified the following:

- **Communication**

Ensure clear and regular communication with customers; among staff and with external stakeholders (including the community) during the development process.

- **Timing / Timelines**

Maintain predictable and defined timelines that are respected by all stakeholders in the development process.

- **Flexibility / Innovation**

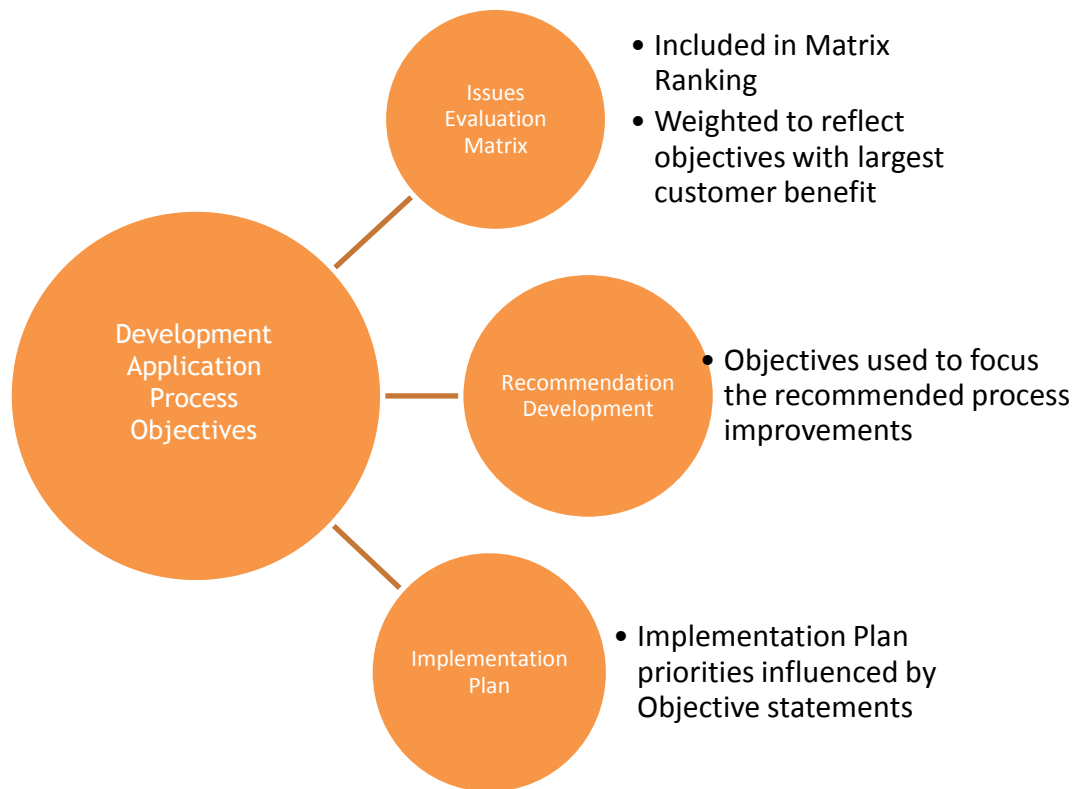
Support staff ingenuity and be receptive of new ideas and innovation in the development application process.

- **Equity / Fairness**
Provide fair and reasonable treatment to applicants, stakeholders and the community in the development process.
- **Consistency / Certainty**
Ensure consistency of process and direction for staff, applicants and stakeholders in the development process.
- **Transparency**
Ensure transparency of process and decisions for the benefit of staff, applicants, and the community in the development process.
- **Professionalism**
Support a high level of professionalism among staff, applicants and stakeholders in the development process.
- **Quality/Value Added**
Encourage staff and applicant contributions that bring value to the development process, and ultimately, the built (or end) product of the development process. Review and remove low value process.

1.3.2 Purpose of the Objectives

The objectives identified above have been used in several ways to guide and shape this review including:

- **Issues evaluation:** The objectives were used as part of a matrix ranking system to help determine which issues held the highest benefit if improvement efforts were undertaken.
- **Recommendation development:** The objectives statements (along with Best Practices and Staff consultation) were used to help focus the nature of recommended improvements to the development process.
- **Implementation Plan:** The objective statements should be used to help prioritize the recommended improvements to the development process. Process improvements that address multiple objectives should be prioritized higher for implementation.



1.4 Process Review Methodology

1.4.1 Project Charter Creation and Approval

A Project Charter was created to guide and focus the Development Application Process Review in the fall of 2012 and received final endorsement from the Project Sponsor - Doug Gilchrist, Acting General Manager - Community Sustainability in early January 2013.

1.4.2 Project Team Selection

The Project Manager and Project Team for the Development Application Process Review were selected to ensure representation from a variety of primary internal stakeholder groups. The team includes both CUPE and management staff with backgrounds in both the public and private sector and with a variety of local governments.

Project Sponsor: **Doug Gilchrist** (Acting GM, Community Sustainability Division)
 Project Manager: **Ryan Smith** (Acting Manager, Land Use Management)
 Project Team: **Abigail Riley** (Land Use Planner)
Doug Patan (Building and Permitting Branch Manager)

Bernard Burgat (Development Engineering Technician)
Jordan Hettinga (Manager of Real Estate Services)

1.4.3 Vision/Objectives Workshop with Internal Stakeholders

A facilitated workshop was held with a variety of internal stakeholders early in the DAPR to create a common vision and understanding of the objectives of a customer-focused Development Process. All City departments involved in the development process were represented.

The workshop produced the objectives described in Section 1.3.



1.4.4 External Stakeholder Interviews

Two team members performed thirteen 1 hour interviews with development community stakeholders who have recent experience with the City's development processes. Included in this group were land developers, multi-family developers, engineers, designers, architects and builders. Each interview was conducted with the same set of questions during a 2 week period in January 2013.

1.4.5 Internal Stakeholder Interviews

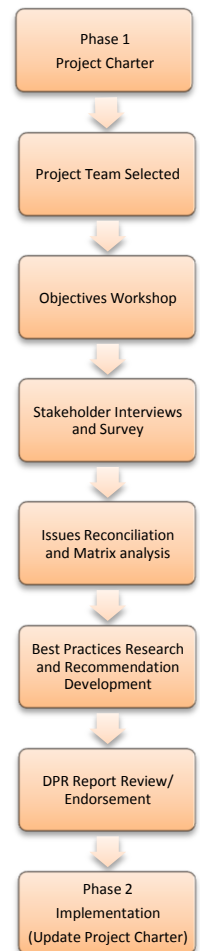
Twenty-three internal staff members were interviewed, and many others provided input by email or via informal meetings.

1.4.6 Online Survey

Twenty external stakeholders responded to an online survey. A summary of the results is provided later in this report (Appendix B).

1.4.7 Feedback/Issues Evaluation Matrix

The DAPR team organized commonly themed feedback/issues, and created a matrix to help identify those with the highest value for improvement (in terms of impact to customers of the development process and other objectives identified in the Visioning session).



1.4.8 Targeted Best Practices Research

Best Practices Research was targeted at issues that ranked highest on the matrix. The team identified municipalities for best practices research through interview responses, survey responses, online research, and industry word of mouth. Research was not limited to like-size municipalities; rather, it targeted those that were identified as having great customer and development services.

1.4.9 Discussions on Potential Improvement Strategies - Small Staff Meetings

The Project Manager conducted a series of meetings with internal process stakeholders to solicit ideas for potential process improvements, review suggested best practice improvements, and reinforce the process.

1.4.10 Formulated Recommendations for Development Process Improvements

Recommendations for process improvements were formulated based on:



1.4.11 Phase 2 Implementation Recommendations Created

The implementation recommendations were created based on analysis of past Development Application Process Review implementation and Corporate Plan direction.

The recommendations have been organized to:

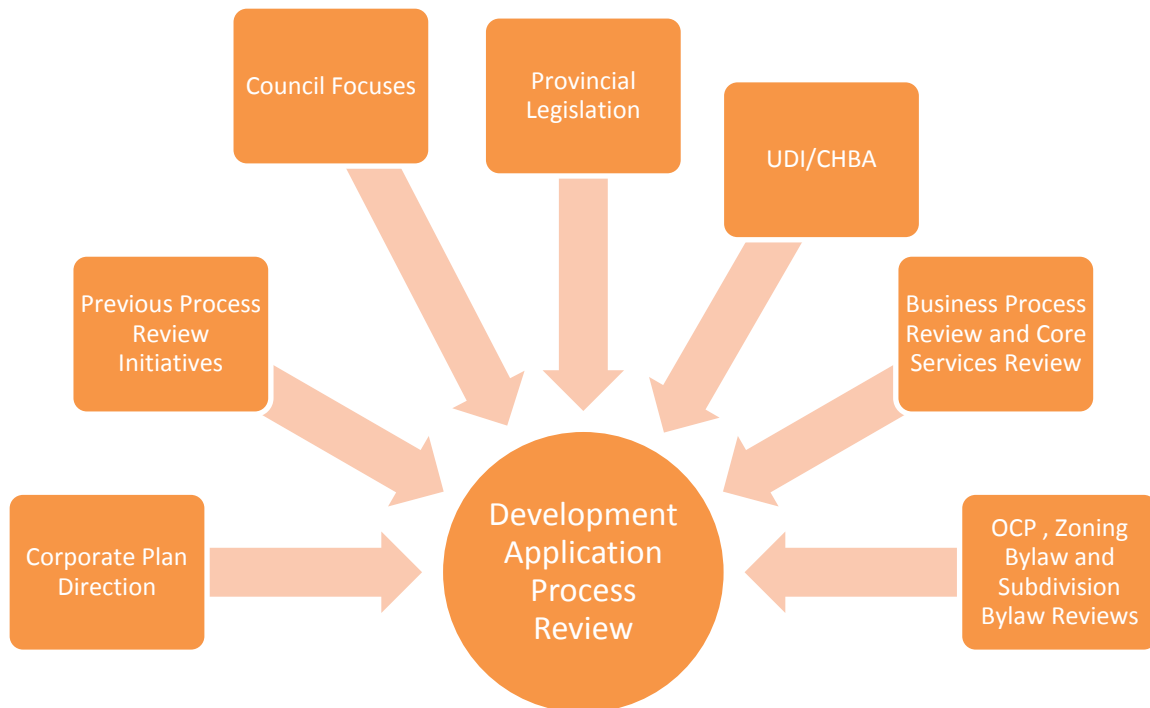
- Create accountability and dedicate resources for implementation
- Prioritize the implementation of strong ‘basic’ business practices that will form the foundation for more complex and innovative improvements in the future
- Monitor success of implemented improvements

1.4.12 Report out on recommended Development Process Improvements

Report circulated to all stakeholder departments and external development partners who participated in the process.

2.0 Context for the Development Application Process Review

The DAPR project had many different influences. The following sections summarize the primary policies, regulations and context factors that informed or impacted the project.



2.1 The DAPR Project is aligned with the following higher level City of Kelowna policy directions and Provincial regulation:

2.1.1 Corporate Plan

The DAPR is aligned with the overarching Corporate Planning strategy to “reorganize for greater flexibility, collaboration, and accountability”, and correlates to the following objectives:

Performance Excellence

- Codify and formally rethink business processes
- Streamline decision making and prioritization
- Incubate and adopt innovations and best practices
- Encourage employee-led continuous improvement
- Make results visible to interested stakeholders
- Encourage cross-functional teams

Passionate Public Service

- Document policies, processes and procedures
- Clearly understand expectations, roles and contributions

Responsive Customer Service

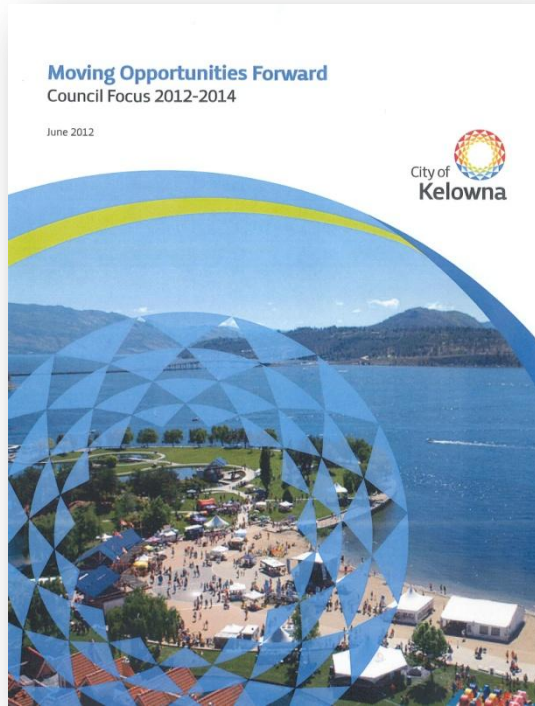
- Continuously update processes to suit changing customer needs and desires
- Offer business (and user) friendly services and processes

Pioneering Leadership

- Initiate significant improvements to high-profile service
- Monitor new approaches from other municipalities and industry best practices

2.1.2 2012-2014 Council Priorities

With regard to Planning and Development, Council has identified the following focus in their 2012-2014 “Moving Opportunities Forward” document:



THE GOVERNANCE SPECTRUM

The manner in which Council intends to set the tone for the City of Kelowna provides greater clarity of expectations in how they intend to lead and govern the City. Beyond how Council intends to act, staff will benefit from understanding where Council stands on core matters of governance.

Planning and Development

Council views their role as enablers of sustainable investment in the community. They believe sustainable investment is best achieved through a fair yet firm implementation of the City's plans and policies.

Council seeks to encourage and support investment whereby advantages accrue to the community, further City plans and enhance quality of life while also helping to achieve objectives of the investors/ applicants. Win-win approaches will be highly valued.

Staff will be empowered, highly motivated and accountable to work with applicants (pro-active approach) to help shepherd applications through their respective processes.

This document also summarizes Council's main focus areas as:

- Focus on Results
- Grow our Economy
- Enhance citizens' quality of life
- Deliver on Our Plan
- Proactive and Pragmatic Leadership

The objectives and recommendations of this Development Application Process Review support the following Council opportunities:

- Achieving Quality Outcomes
- Collaborative Approaches
- Innovation and Risk Taking are Valued
- Consistency and Alignment

2.1.3 In-Process Initiatives Impacted By or Impacting the Development Process Review

The following in-progress initiatives may be referenced in this report.

- Official Community Plan - Streamlining/Efficiencies Review
- Subdivision and Development Servicing Bylaw - Update for consistency with Official Community Plan
- Zoning Bylaw - Streamlining/Efficiencies Review

Some recommendations in this report may impact the focus/direction of these initiatives and therefore each will need to be reviewed after the endorsement of this report.

2.1.4 Provincial Legislation

The development process in British Columbia is regulated by the following Provincial Legislation:

- Local Government Act
- Community Charter
- Land Title Act
- Strata Property Act
- BC Building Code

This legislation was considered and may be referenced in the recommendations of this report.

2.2 Analysis of Previous Development Application Process Reviews

In the last 6 years, the City of Kelowna has undertaken two Development Application Process reviews. Each differed slightly in scope and objectives.

2.2.1 City of Kelowna Development Application Process Improvement Report (Taylor, 2007) and Development Application Process Review 2012

The City of Kelowna undertook a comprehensive Development Process Review in 2007 which was led by a consultant and a focused Development Process Review in 2012 conducted by the City's Strategic Initiatives Department.

The recommendations in both reports were only partially implemented.

From the 2007 report the following process improvements were made:

- Website updated
- New application forms and checklists created
- Development Review Team (DRT) created
- 'Planner of the day' concept implemented
- Improvements to many types of application processes (eg. Development Permits required in advance of Preliminary Subdivision to improve Hillside development practices)

2.2.2 From the 2012 Development Application Process Review, 4 of the 12 recommendations were implemented:

- Mandatory attendance at Development Application Review Meetings and the creation of detailed meeting agendas.
- Improved Terms of Reference for Development Review Team (DRT)
- Improvements to standardized circulation comments.
- Expanded access to Development Application (DA) tracking system for all City departments involved in the development process.

2.2.3 Several recommendations that will be made later in this report also appeared in either the 2007 or 2012 reports. There appears to be a combination of reasons why the recommendations from both reports were only partially implemented, including:

- Limited priority assigned to project implementation
- No accountability structure in the implementation plan
- Unrealistic and un-coordinated implementation plan
- Lack of resources available for implementation

The recommendations of this report will attempt to address these issues in the implementation plan.

3.0 Current Department Roles and Responsibilities in the Development Application Process

The following are a list of City Departments with primary (file management) and secondary (file contributors) responsibilities in the development application process. The diagram below shows those departments with primary responsibilities at the core of the process while those with secondary responsibilities on the periphery. It is important to note that the roles of each department below are limited to primary roles with regard to the development process and are not a complete list of all responsibilities.

3.1 Departments and Roles

Land Use Management

This department guides development within our town centres, urban areas, and rural areas. Land Use Management reviews development proposals to ensure the Official Community Plan and other City policies are being implemented and followed.

They are the primary



file managers for Official Community Plan (OCP) Amendment, Area Structure Plan, Rezoning, Development Permit (all types), Development Variance Permit, Liquor License, ALR, and, Temporary Use Permit Applications. Land Use Management performs planning policy, zoning bylaw and urban design reviews.

Development Services

Responsible for Building Permit, Development Engineering Review and Subdivision. The Building and Permitting Branch processes Building and Plumbing Permit applications for review, performs inspections and monitors compliance. The Development Engineering Branch is responsible for Civil Engineering design and construction related to new development. The Subdivision Approvals Branch reviews subdivision applications for compliance with the Land Title Act, Local Government Act and Strata Property Act.

The Development Services Department also operates the 'One Window Application Centre service.

Policy and Planning

The Policy & Planning Department develops and oversees approval and implementation of long-term plans to advance community sustainability. The department's work is undertaken in consultation with the community, stakeholders and interdepartmental staff.

Policy and Planning handles preparation of the Official Community Plan as well as land use related plans such neighborhood and sector plans. Plans such as the Community Climate Action Plan, Agriculture Plan, Housing Strategy, and Commercial Study are also managed by the Policy and Planning Department.

Infrastructure Planning

Infrastructure Planning (IPLAN) department develops long-range infrastructure service and capital plans for all City-owned capital assets, including parks and natural areas, multi-modal transportation systems and utility networks and buildings. IPLAN promotes an integrated and collaborative planning and design approach in order to achieve high levels of performance and build the physical support systems for a sustainable, creative and liveable city.

The department provides technical support and design review to the development application process by assessing proposed developments and their potential impact on the City's infrastructure systems. IPLAN also assesses any potential impact to the City's capital budgets to ensure sound fiscal management, appropriate levels of investment and foster funding partnerships with the development community.

Real Estate Services

Real Estate Services Branch of the Real Estate & Building Services Department is responsible for the fair and equitable acquisition,

disposition, development, management and maintenance of the City's real estate assets. During the development process, they ensure that City required land rights are obtained such as utility or public access Rights-of-way. They also ensure that land identified in the OCP for future road, park or utilities is protected or acquired. This group provides circulation feedback on development files as relevant.

Civic Operations

Infrastructure Operations is responsible for the sustainable maintenance and operations of City roadways, parkland, landfill and utilities.

This department maintains the public realm infrastructure constructed and/or transferred to the City during the development process, including parks, natural spaces, sewerage systems, water infrastructure, roads, and boulevards.

Office of the City Clerk

Provides services to Council and their Committees, statutory and procedural information related to all levels of government legislation, creates bylaws and policies, conducts Municipal Elections and is responsible for the execution of all legal City documents within the complex legal environment in which local governments operate.

This branch works with the Land Use Management Branch to collect, review, and publish Council reports relating to development and structures City Council's meeting agendas.

4.0 Core Strengths of Today's Development Application Process

Both the external stakeholder interviews and online survey helped to identify the following strengths of the City's development process:

- Staff

Staff is hardworking and knowledgeable.

Many staff members have years of experience working with/in the Okanagan's development industry.

Many staff are willing to go the 'extra-mile' for customers.

- One Window Application Centre

One Window Application Centre concept is highly valued by customers and many internal staff.

- Development Review Team (DRT)*

A focused and business-like Development Review Team can be very effective in a municipal context, and many municipalities have either adopted the practice in the past few years, or are considering it. Many

customers have mentioned the feedback from this staff group as beneficial.

**Further improvements are underway and more suggested improvements are identified in this report.*

- Development Application Review Meeting (DAR)

Weekly staff meeting where new applications and development inquiries are reviewed by Land Use Management, Development Services, Infrastructure Planning, Real Estate, Policy and Planning, and Bylaw Services staff.

- Development Application Tracking system integration with mapping and other permitting types

Although troubled by inconsistent data input and updating, the City's development application tracking system allows for detailed application tracking and statistical reporting, and has strong compatibility with the City's mapping services.

**Many users noted room for improvement on system use.*

- Committed Management

Managers working in the Development Process are highly committed and responsive to customers.

- Council's Consistency and practical direction

Customers note their appreciation for the current Council's clear direction and practicality.

5.0 Key Interview and Survey Results

Issues identified by both internal and external stakeholders interviewed in the City's Development Process Review appear below. The feedback does not present an exhaustive list, rather it represents the most commonly identified issues/parts of the process that were highlighted for improvement.

5.1 Objectives, Vision and Culture

- Lack of flexibility, problem solving and 'facilitative' approach by some staff.
- Staff to be more empowered to make decisions.
- Some staff lack a 'big picture' understanding of the Development Process.
- Inconsistent approach to and understanding of internal and external customer service expectations.

5.2 Structure

- Multiple File Managers/Planners (and Department managers) on a single development application slows issue resolution and decision making, and can create inconsistency.
- Lack of coordination between Policy and Planning, Land Use Management and Development Services on policy updates and implementation. Potentially a lack of resources, and prioritization structure to initiate and deliver special planning and development projects.
- No structure for ownership or implementation of results for previous development process review recommendations.
- Competing departmental objectives create internal conflict and disputes that cannot be resolved in a timely fashion.

5.3 Accountability

- General application timelines are not well documented or available to customers and new staff.
- No formally documented internal dispute resolution processes exist for Planning issues as they do for Development Engineering issues.
- Structure makes it difficult for managers to understand decision making hierarchy.
- No formal documentation of roles and responsibilities for staff and stakeholders participating in the development process.
- Responsibility for site grading inspection in new subdivision is unclear (after subdivision approval).
- Transportation Planning feedback and decision making on development applications takes too long and is disorganized. Requirements for Traffic Impact Studies can be unclear and hard to obtain.
- Late communication of requirements (late hits) to developers during the development process is still occurring.

5.4 Pre-Application/One Window Service Centre

- Pre-application feedback is often incomplete, slow to generate.
- Format for pre-application feedback is inconsistent.
- Confusion about the proper avenues for pre-application consultation.
- No standardized checklists exist for pre-application meetings.

- DRT could be valuable but too many stakeholders are included and development community is unclear about protocol, timing, etc...
- Development Application Review meetings and informal pre-application meeting requirements not coordinated or communicated effectively.
- Succession plan required to ensure high levels of customer service can be maintained at the One Window Application Centre.

5.5 Application Intake, File Management, Customer Communication

- No standardized follow-up procedure after a customer has submitted a development application.
- Long delays between file set up and contact with the customer.
- Incomplete applications are accepted and circulated by One Window Application Centre. This can cause delays for applicants and unrealistic expectations.
- In many instances timelines are not communicated when application is submitted.
- Process can be very confusing to applicants and there is not enough regular contact from file managers.
- Circulation comments are not communicated to applicants in a standard format (or in some instances at the same time). Conflicting direction is sometimes received in circulation comments.
- Process and requirements for the execution and timing of Servicing Agreements, Landscape Agreements and Performance bonding needs to be reviewed and improved for the customer.
- Meeting minutes/outcomes are not consistently circulated after meetings with customers.
- Notification to applicants regarding their inclusion on a Council agenda may occur at the last minute. The Council report/agenda process can leave File Managers insufficient time to contact their customers to notify of the timing.
- Disconnect between development approvals and operations and maintenance still exists and can cause 'late hits'.

5.6 Website, Electronic File Management Improvements (process automation)

- Low staff, applicant, community awareness of online application tracking and information capabilities on website.
- Website information updates are slow or simply not possible.
- Some desire for electronic submission (not currently available).
- Public ability to track development application progress is desirable.

5.7 Key Online Survey Results

An online survey was also used to help determine areas of the City's Development Application Process that required improvement. The following is a brief summary of the most important results. Graphical analysis for the survey results is available in Appendix "B".

5.7.1 Last Interaction with the City's Development Application Process

Most survey respondents had an interaction with the City's development process within 6 months of the survey date. This confirmed that respondent's feedback was based on recent experience in the development process and therefore very relevant.

5.7.2 Part of Development Application Process Used by Survey Respondent

The survey results show that most survey respondents reported experience with many parts of the development process. Most results showed experience with Rezoning, Development Permit, Subdivision and Building Permit.

5.7.3 Bylaws/Policies Needing Review

The survey results showed that most customers feel that the City's Zoning Bylaw and Subdivision and Development Servicing Bylaw rank highest in terms of needing a review/update.

5.7.4 Performance on Key Customer Service Indicators

The survey results showed average to poor results in several key customer service categories (timeliness, fairness, outcomes); however, quite well in the "Courtesy of Staff" category.

5.7.5 Overall Customer Service Performance

Approximately 70% of survey respondents said that the City's Customer Service levels were between satisfactory, excellent (and Don't change a thing!) whereas 30% of respondents ranked the process as inconsistent or poor.

6.0 Best Practices Research

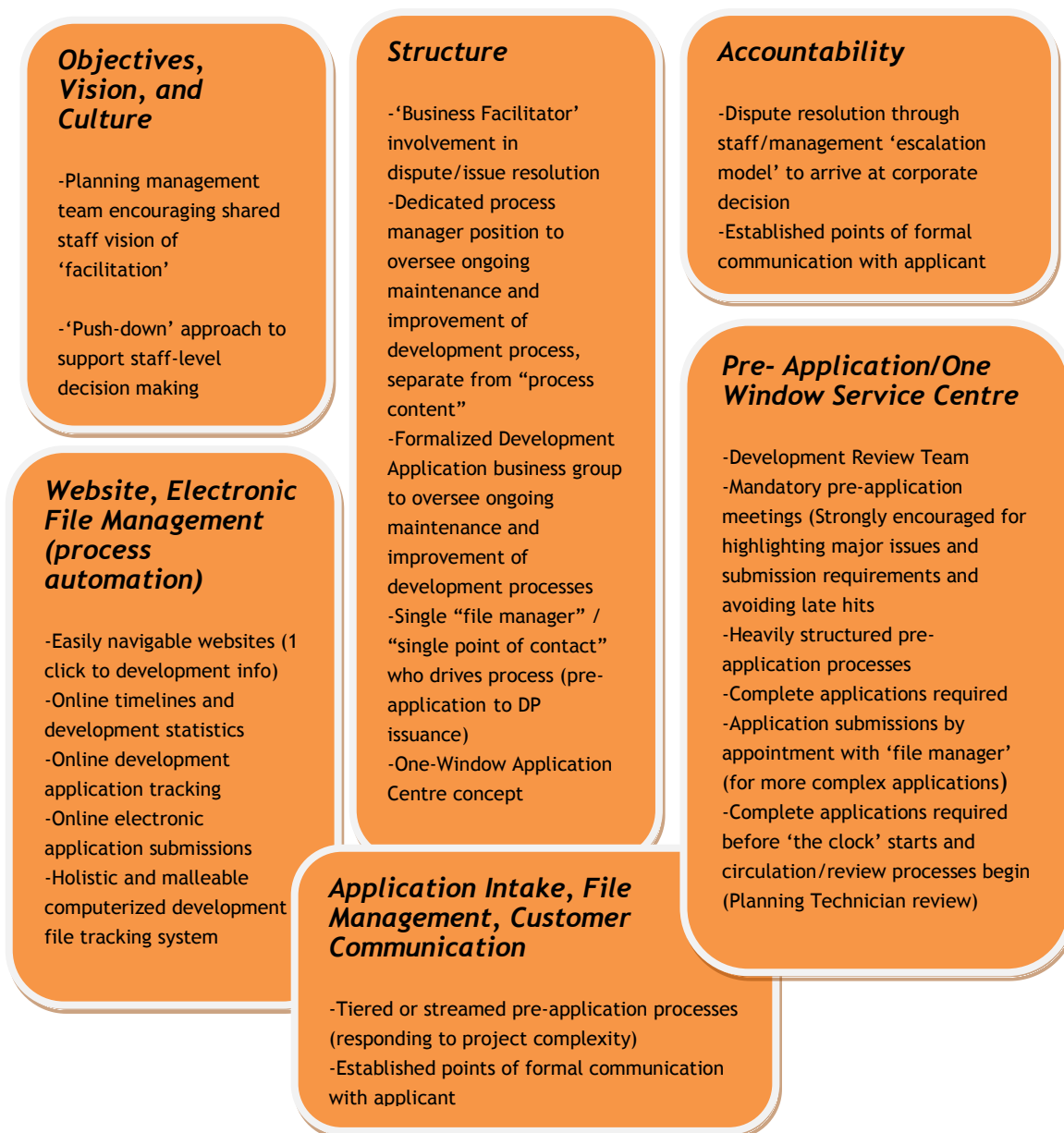
6.1 Municipalities Researched

British Columbia: Surrey, Vernon, Langley, Coquitlam, Vancouver, Kamloops, Chilliwack

Ontario: Guelph, Hamilton, London, Kitchener, Cambridge, Brantford

Alberta: Calgary, Edmonton

6.2 Summary of Best Practices - Municipal Development Application Processes



7.0 Recommendations for Development Application Process Improvement

The recommendations below were derived from the Best Practices Research, Corporate and Council direction, and objectives which were identified in the Development Process Objectives workshop (Communication, Timelines, Fairness, Equity, Transparency, Professionalism, Flexibility, Innovation, Quality and Value Added). The recommended improvements are sorted into “Management”, “Staff”, and “All” categories for each component of the process. These correspond to the level responsible for the implementation of the recommendation.

7.1 Objectives, Vision and Culture

One of the primary challenges of the City’s development process from both internal and external stakeholders is that the culture of the process is not always one that is focused on facilitation but instead relies heavily on regulations. The following recommendations are meant to refocus the culture as one that encourages facilitation and solutions-oriented decision making (with consistent supporting policy).

Objectives Targeted:

- Communication
- Consistency/Certainty
- Quality/Value Added

Major Recommendations:

*Development Process
Operations Manual*

*Increased staff
empowerment*

*Reinforce corporate and
process objectives*

*File manager ‘facilitation’
focus*

Management

Managers/leaders involved in the development process must actively reinforce vision, objectives, roles, expectations for the Development Application Process and Performance.

File Manager role/responsibilities created to reflect “facilitation” focus.

Management focus on empowering file managers. Annual staff training focused on facilitation and leadership.

Innovative ideas that improve the process or add value for customers should be rewarded and encouraged.

Staff

Subjective design feedback to be reduced. Design critique to focus on performance objectives of design guidelines.

Complete review of Zoning Bylaw including: Commercial zones, Industrial zones, Public and Institutional zones, Landscaping and Screening, Specific Use Regulations, General Development Regulations, Interpretation - General Definitions.

All

Development Process ‘Policies/Operations’ manual to be created to document specific roles and responsibilities, direction and practices for all staff involved in the process.

7.2 Structure

The structure of the departments participating in the development process is very important in that it sets the direction for decision making and file management models. The best practices research found that many successful municipalities use a single file manager model to process development applications. During interviews, many internal stakeholders also mentioned the lack of administrative support for file managers working in the development process.

Objectives Targeted:

- Communication,
- Consistency/Certainty
- Professionalism

Major Recommendations:

Function and resources to support special policy and planning projects

Single File Manager approach to file processing

Improved administrative support in Land Use Branch

Dedicated function and resources supporting implementation of DAPR recommendations

Dedicated Transportation Planning support in the Development Engineering Branch

Management

Adopt 'single file manager' approach to the development process to improve consistency, decision making and project management during the application process. A 'file manager' should be the primary point of contact for the applicant, for internal input and for decision making.

Set roles and responsibilities to ensure collaboration occurs but that there is a single party responsible for decision making. Multiple managers and directors should not be involved in direct file management on an application/ development. Decision making at both the manager and director level will flow to a single point.

Create specialized function (with re-deployed resources) to complete special planning projects (Zoning Bylaw updates, Area Structure Plans, Strategic development projects) or create prioritization process for use by Land Use Management, Development Services and Policy and Planning Branch to identify priority projects for resourcing.

Add dedicated function and resources for on-going support of the Development Application Process Review implementation.

Increase administrative support for Land Use Management Branch with the goal of improved support for Development Application Tracking System inputs and communication with applicants and the public.

Reduce functional overlap between Building and Permitting Branch and Fire Prevention Branch by combining responsibilities under a single branch.

Add a dedicated transportation planning/engineering resource to the Development Engineering Branch in order to improve the consistency and turn-around time on development applications that depend upon this discipline. This will also allow the transportation planning component of the Infrastructure Planning Department to focus on long term network objectives.

Staff/All - N/A

7.3 Accountability

Internal/external stakeholder interviews and online surveying all showed a lack of accountability for timelines, decision making, technical knowledge and participation in the City's development process related to some participants. The following recommendations are aimed at increasing accountability in the City's Development Process:

Objectives Targeted:

- Timelines
- Equity/Fairness
- Consistency/Certainty
- Transparency
- Professionalism

Major Recommendations:

Document all necessary dispute resolution processes

Set standardized timelines for dispute resolution

Create "Late Hits" Policy

Create Site Grading Accountability

Create and track KPI's

Improve DRT Meeting

Exit surveys to all applicants

Management

Define and document (in Development Application Process Operations Manual) dispute resolution processes (by type of dispute). Development Engineering Branch dispute resolution process to be used as an example.

Set standardized timelines for dispute resolution.

Identify, track and report on important components in the development process (timelines, dispute resolution) as key performance indicators (KPI's)

Clear policy for staff on "Late Hits" (late communication of development process requirements to a customer).

Clarify legislative authority for common development requirements in a clear document and circulate to all City stakeholders in the development process. Add document to Development Process Operations manual.

Reduce Development Review Team (DRT) attendance list to managers directly related to the development process and ensure that attendees have decision making authority.

Identify "Code of Conduct" policies for staff participating in the development process (to be included in a Development Process Operations Manual)

Staff

Online exit surveys emailed to all applicants after permitting/process with City complete.

All

Responsibility for site grading inspections and enforcement from Subdivision Approval until landscape completion to be clarified, assigned, implemented and tracked for performance.

7.4 Pre-Application/One Window Service Centre

Best practices research showed that municipalities with strong, structured pre-application processes were able to reduce 'late-hits' and add value to the process for customers.

Objectives Targeted:

- Communication
- Quality/Value Added

Major Recommendations:

Improve structure, communication and formality of Pre-Application process

Improve communication to One-Window Service Centre relating to bylaw and policy updates

Training and Succession planning for One-Window Application Centre Development Technicians

Use DA System to track major pre-application inquiries

Management

Create formal streams of pre-application processes dependent on development scale.

Staff

Track File and Project inquiry information using new file type in Development Application (DA) Tracking system.

Refocus existing meetings (DRT/Design Review/DAR) as formal (advertised and required) pre-application review for project inquiries.

Produce standardized customer/applicant feedback templates and timelines for each type of inquiry. Feedback should include complete list of required studies/requirements prior to application submission.

Communicate pre-application process to customers clearly and use key messages to convey value in process time savings.

Study/create Development Permit exemptions (or expedited process) for Commercial, Industrial and Multi-family projects that receive support through Advisory Design review process or for projects using standardized plans.

File Managers/Planners "Scoping" list or checklist to help identify which additional staff may need to attend preliminary meetings.

Create training and succession plans for Development Technician working in the One-Window Application Centre.

All

Create standardized early notification format for One-Window Application Centre staff re: bylaw and policy updates with standardized format and storage location

7.5 Application Intake, File Management, Customer Communication

The recommendations that fall into this category address many of the issues that were the most highly ranked in the Development Process Review Matrix. These issues included slow file set-up, incomplete applications, inconsistent communication to customers and unclear timelines.

Objectives Targeted:

- Communication
- Timelines
- Consistency/Certainty
- Transparency
- Professionalism

Major Recommendations:

Standardized templates and stage gates for customer contact during application process.

Online file tracking set-up

New file review prior to circulation.

Move to electronic circulation for all file types

Research fast-track application processes

Study Board of Variance use to reduce processing times

Incomplete applications no longer accepted

Management

Monitor and take action to improve content of DA system inputs (from One Window staff, file managers, Development Clerks, Admin Coordinator, City Clerks).

Future plan for junior tech staff member to check all new applications for more complex submission requirements.

Designate standard 'milestones' where development application file managers must update their customers (and internal stakeholders by cc: on the progress of their development application).

Study potential for 'fast-track' process for minor development permit applications (or those without variance permit applications) with reduced circulation time. Consider using the City's Board of Variance if time savings could be realized.

Collaboration between Land Use Management and City Clerk's staff will be required to improve Council timing/meeting notification for customers.

Clarify responsibility/process for Development Application System Updates.

Staff

Standardized templates for File Manager response to new files. (This relates to Building Permit and Development Applications).

Set firm threshold for complete applications. Create list of standard documents that must be submitted with each file to applicant and one window. One window will no longer accept incomplete applications.

Assigned Planner/File Manager to review every file prior to circulation.

Planner/File Manager to review every application and provide initial email/letter to applicant with initial scoping analysis, and timelines. If file not complete at this stage, it will be placed "off-line"

Circulate all application types electronically to reduce paper, save postage, reduce mailing time, and speed up response time.

Building Permit file review to occur immediately after application receipt to reduce 'late hits'.

Development Engineering Branch to set up 'drop box' style folder to allow Civil plan review by other stakeholders prior to weekly meeting.

All

Notify customers of location online where file progress can be tracked (in application confirmation letter and online)

Create policy for minute taking and the circulation of meeting minutes/results related to major applications in the DA process.

7.6 Website, Electronic File Management (process automation)

The City of Kelowna has developed a number of different methods for its customers and citizens to track development applications online. Unfortunately, this work has not been well advertised or communicated and use of these tools is quite low. The following recommendations are aimed at better coordinating and capitalizing on the opportunities that the City's website offers as well as improving the City's internal use of development tracking software. This will also benefit the ability of the public and special interest groups who wish to track the progress of current applications.

Objectives Targeted:

- Communication
- Flexibility/Innovation
- Transparency
- Quality/Value Added

Major Recommendations:

Improve online application tracking abilities for customers

Improve staff knowledge of Development Application System

Make monthly stats available online

Improve DA system to allow for online application submission

Management

Improve customer ability to track applications which will require that staff improve their use of the system.

Update Current Development Applications map to show file tracking data and Planner contact info.

Make monthly application stats available online.

Development process organizational structure and application process communicated on website.

"About Us" page identifying staff and managers who participate in the development process and their area of responsibility.

Staff

Clarify role of customer/applicant on website.

Update website with development process outline and related technical and policy information.

Require digital submission (cd/memory stick/ftp site) of all application materials for larger developments.

Create Hyperlinks from Council Agenda to Online DA tracking system.

All

Updated training for staff/management using the Development Application system.

Research and develop online application submission system and process.

7.7 Community Communications

While “Customer Communication” improvements are addressed in a separate section above, the recommendations in this section are aimed at a broader community audience including directly impacted neighbourhoods and the general public. The goal of improved communications with these groups is to increase meaningful participation and involvement in the development application process.

Objectives Targeted:

- Communication
- Flexibility/Innovation
- Quality/Value Added
- Transparency

Major Recommendations:

Development Process courses for citizens

Develop a comprehensive Community Communications Approach

Develop a comprehensive community communications approach to the development process including:

-Create Planning/Development Process Information Course for customers

-Create Planning/Development Process Information Course for citizens

-Create a communications strategy that considers everything from notification to the development application decision. Aspects that will be considered include but are not limited to:

**Raise awareness of online application tracking opportunities and development application process,*

**Evaluate and potentially adopt new online public engagement tools.*

**Notification process including signage to enhance the communities’ ability to track new development.*

7.8 “Outside of the Box” Ideas

During the Development Process Review interviews and research, a number of creative ideas and suggestions were noted. It is recommended that each be researched /discussed to determine feasibility for implementation in the future.

Objectives Targeted:

- Communication
- Flexibility/Innovation
- Quality/Value Added

Major Recommendations:

Mobile development tracking App

Mall Kiosk for Development Info

Preferred Applicant ‘fast-track’ list

Create Mobile App which allows customers to track their permits via Smart Phone.

Waive Development Permits for projects that use designs that are pre-approved by the City (for carriage homes, row houses etc.)

City kiosk in Orchard Park Mall staffed to support development questions and discussions one weekend per month.

“Need Help?” page on website for development process with link to service request system or email directly to One-Window staff.

Create a ‘preferred applicant’ list that fast-tracks applications based on applicant performance history, complete application submission, and conformance with relevant policy.

Hold an annual workshop with neighboring municipalities to share and coordinate new initiatives.

Create YouTube videos to help customer understand different aspects of the Development Process.

7.9 Initiatives Already Underway/Completed

During this Development Process Review, several related initiatives have also been progressing that will help improve the development process. These include:

Objectives Targeted:

- Timelines
- Flexibility/Innovation
- Quality/Value Added
- Communication

Projects Completed:

'Quick wins' Zoning Bylaw Update

Public consultation guidelines/matrix

Building and Permitting Branch accreditation

Zoning Bylaw Update (Parking, RM2, RM3 and RM5 zones)

Official Community Plan Development Permit Area review

Official Community Plan and Zoning Bylaw consistency review

Subdivision and Development Servicing Bylaw Update (for consistency with Official Community Plan)

Document clarifying legislative origins/parameters for common development requirements.

Review and implementation of new public consultation matrix/guidelines related to development applications

Building and Permitting Branch audit and accreditation process.

Development Review Team (DRT) improvements.

Community engagement framework

Staff led Design Review Committee

8.0 Implementation Strategy

The approved project charter for the Development Process Review acknowledged that an implementation plan project charter would be necessary for the recommendations made in this report (DPR Phase II). Furthermore the charter identified that this plan would be undertaken after the delivery of the Development Process Review report.

The following sections make recommendations for the implementation planning based on research and work performed during the DPR project.

8.1 Implementation Strategy

There are in excess of 50 recommended development process improvements described in this report. The complete implementation of all recommendations may take between 2-3 years. The DPR Team believes that in the first year, recommendations related to the following theme areas be implemented:

- Communication and File Management
- Accountability
- Website/Electronic File Management
- Pre-Application Process Improvements

The specific improvements in each of these areas should target base business practices in order to build capacity for more complex improvements in later years of implementation.

The implementation strategy for Year 1 should be documented in a new project charter to be created upon completion and endorsement of this report.

8.2 Implementation Structure

Analysis of past development process reviews has shown only partial implementation. In large part this is due to insufficient resourcing, a lack of accountability for implementation, a 'silo mentality' and un-realistic implementation expectations.

- a) This report recommends that the long term accountability for implementation reside in a new function. This function would be responsible for the implementation and tracking of development process improvements.
- b) The new function could be accountable to the General Manager of Community Sustainability through monthly update meetings. We also believe that online progress updates for the implementation will be key in maintaining long term accountability for implementation.

8.3 Resources

Implementation of the Development Process Review recommendations should be done using existing (re-purposed) resources or the repatriated currently vacant Land Use Management position. All resources should have allocated

time in their work plans for the implementation of this initiative (or they could be seconded to a new function to support multiple special projects). This proposed new function will help build capacity and expertise amongst staff as well as enhance their understanding of the need for continual process improvements. In addition, it may provide some staff the opportunity to participate in other special/strategic planning projects. Some of the recommendations will also require financial resources that may be repurposed from existing departmental budgets.

8.4 Measuring Success

It is recommended that progress and success is measured (on a regular basis) using the following methods:

- **Key Performance Indicators**
- **Annual Customer Satisfaction Survey**
- **Customer Exit Surveys**
- **DPR Implementation Team Project Management reporting**
- **Community Satisfaction**

APPENDIX “A” - Development Application Process Review Objectives

Development Application Process - Vision, Ingredients, Objectives

Communication

To ensure clear and regular communication among staff, with applicants, the community and external stakeholders, in the development process.

What we heard:

- Clear communication of roles, responsibilities and expectations for staff involved in the development process.
- Regular, structured and clear communication between file managers and applicants.
- Clear and transparent communication to external stakeholders of the development process, including Community Groups, Special Interest Groups, and the media.
- Clear and timely communication between the City development process/file managers and the applicable stakeholder government agencies.

Timing / Timelines

To maintain predictable and defined timelines which are respected by all stakeholders in the development process.

What we heard:

- Applicants, Council and staff work towards predictable, defined timelines.
- Timelines internal to the development process are understood and respected by all staff (notably staff providing circulation comments).
- External government agencies respect City development process timelines.
- Realistic timelines ensure appropriate expectations.

Flexibility / Innovation

To support staff ingenuity and be receptive of new ideas and innovation in the development process that achieve mutually shared objectives.

What we heard:

- Staff involved in the development process is receptive to new ideas and takes practical/reasonable approaches to considering innovative concepts.

Equity / Fairness

To provide fair and reasonable treatment of applicants, the community and stakeholders in the development process.

What we heard:

- The interests and concerns of community and/or special interest stakeholders be afforded fair and reasonable consideration in the development process.

Consistency / Certainty

To ensure consistency of process and direction for staff, applicants and community in the development process.

What we heard:

- Community can expect consistent policy and practical implementation.
- Staff can expect consistent support and messaging from managers involved in the development process.
- Bylaw interpretations impacting the development process are consistent and communicated to all who may be impacted.
- “Late hit” requirements or issues in the development process are avoided/mitigated.

Transparency

To ensure transparency of process and decisions for the benefit of staff, applicants, the community, and stakeholders in the development process.

What we heard:

- Applicants can track their development applications through a transparent processing mechanism.
- Directions for staff to follow in the development process are transparent.

Professionalism

To support a high level of mutual professionalism among staff, applicants and stakeholders in the development process.

What we heard:

- Staff are able to balance professional ethics, a customer centred approach and the City’s corporate objectives.
- Community recognizes the development process as credible and professional.
- Staff presents and conducts business in a professional manner.
- Staff is able to provide a high level of professional guidance for both experienced and inexperienced clients.

Quality/Value Added

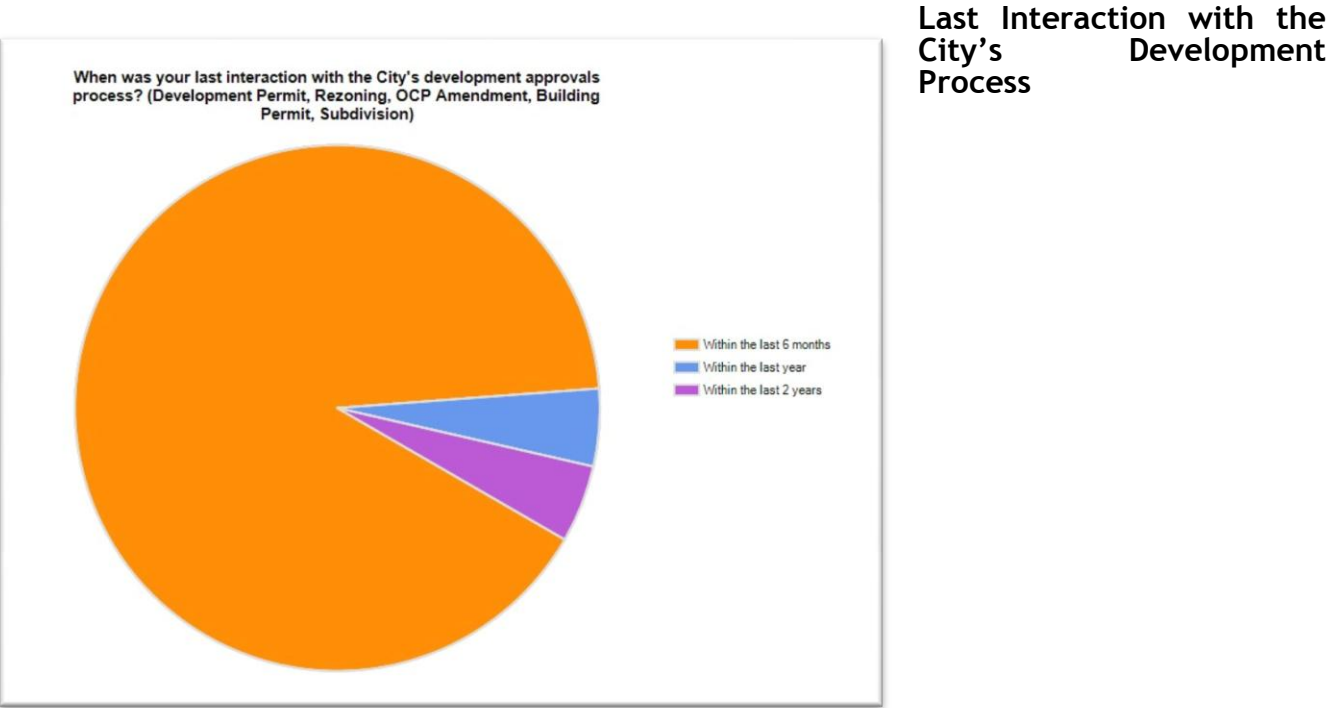
To encourage staff and applicant contributions that bring value to the development process, and ultimately, development projects.

What we heard:

- Applicants can expect a high quality development process (value added, timely)
- Applicants are expected to submit high quality applications in terms of completeness and accuracy.
- The development process is recognized for the high quality of staff work.

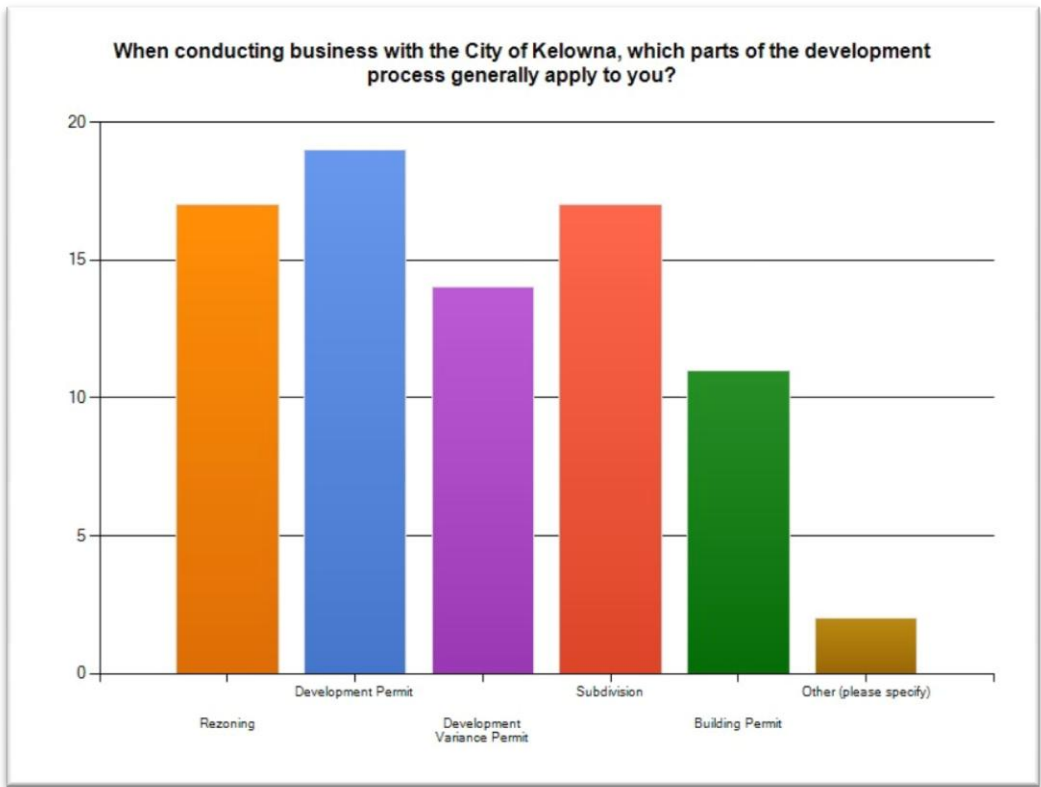
APPENDIX “B” - External Stakeholder Online Survey Results

An online survey was used to help determine areas of the City’s development Process that required improvement. The following charts show a brief summary of the most important results. The survey was structured so that it could be repeated annually to determine if process improvements are improving customer satisfaction.



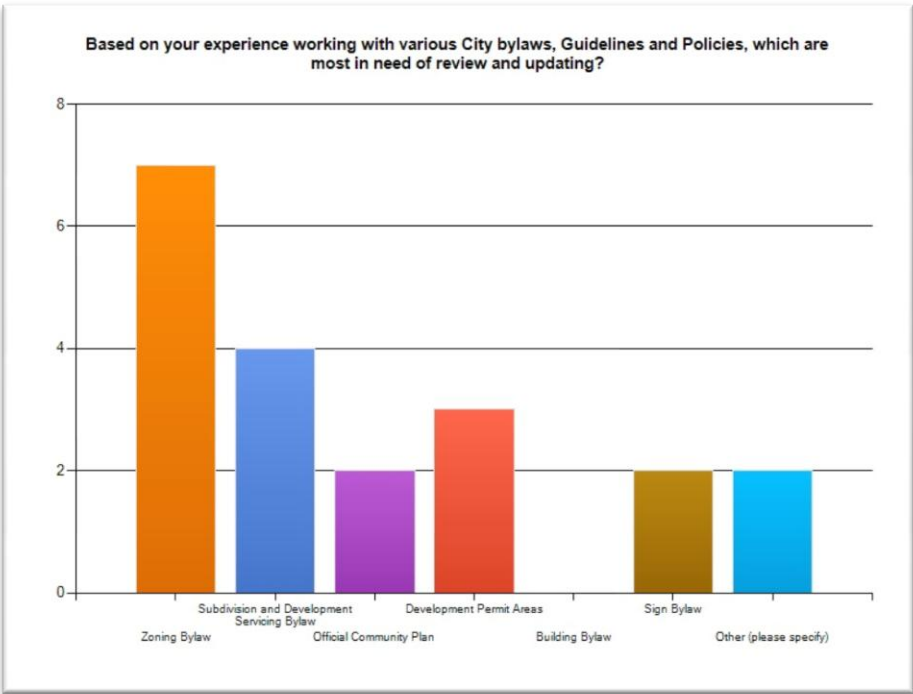
Most survey respondents have had an interaction with the City’s development process within 6 months of the survey date.

Parts of Development Process Used by Survey Respondents



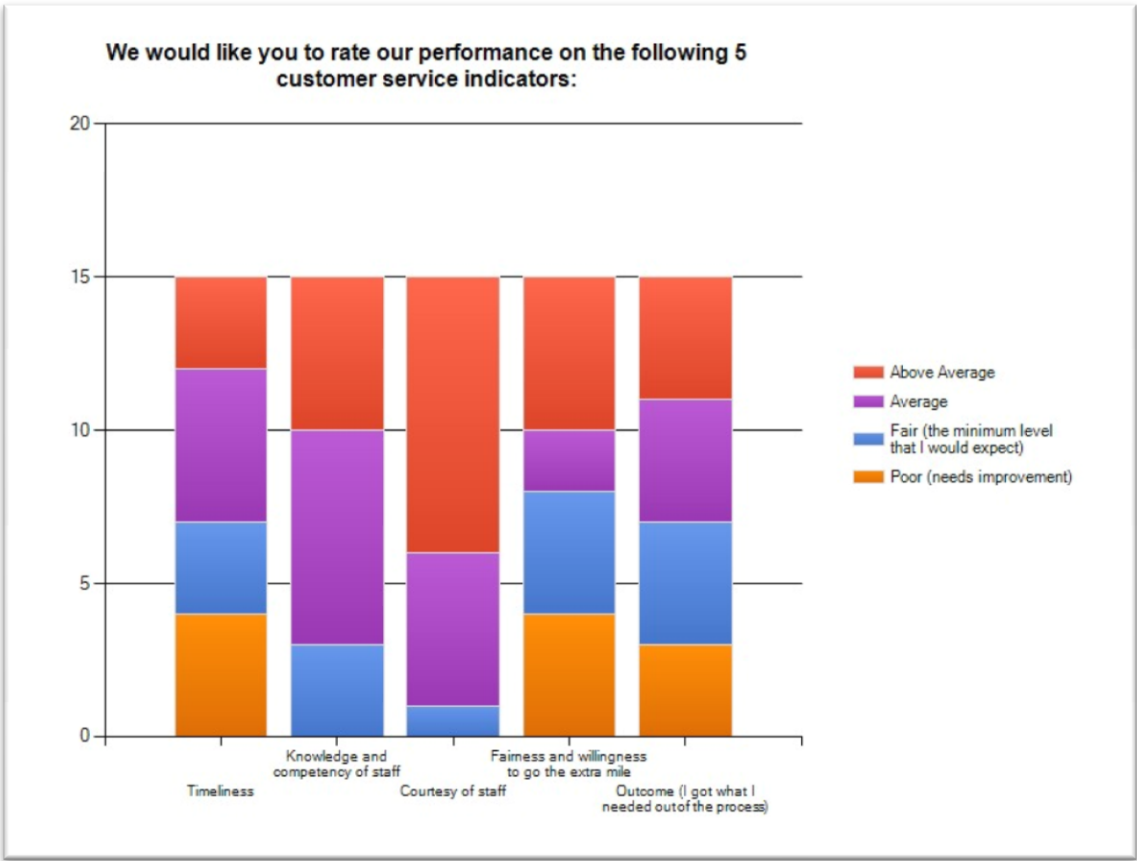
The survey results show that most survey respondents’ reported experience with many parts of the development process.

Bylaws/Policies Needing Review



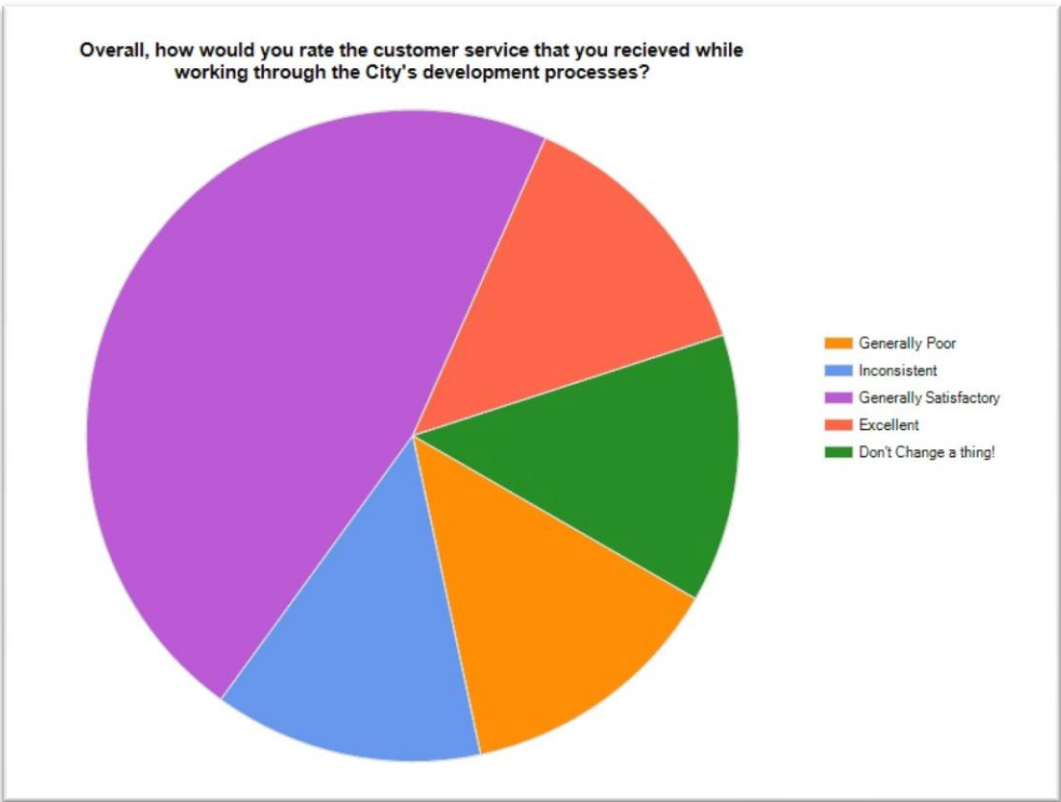
The survey results showed that most customers feel that the City’s Zoning Bylaw and Subdivision and Development Servicing Bylaw rank highest in terms of needing a review/update.

Performance on Key Customer Service Indicators



The survey results showed average to poor results in several key customer service categories; however, quite well in the “Courtesy of Staff” category

Overall Customer Service Performance



Approximately 70% of survey respondents said that the City’s Customer Service levels were between satisfactory, excellent (and don’t change a thing!) whereas 30% of respondents ranked the process as inconsistent or poor.

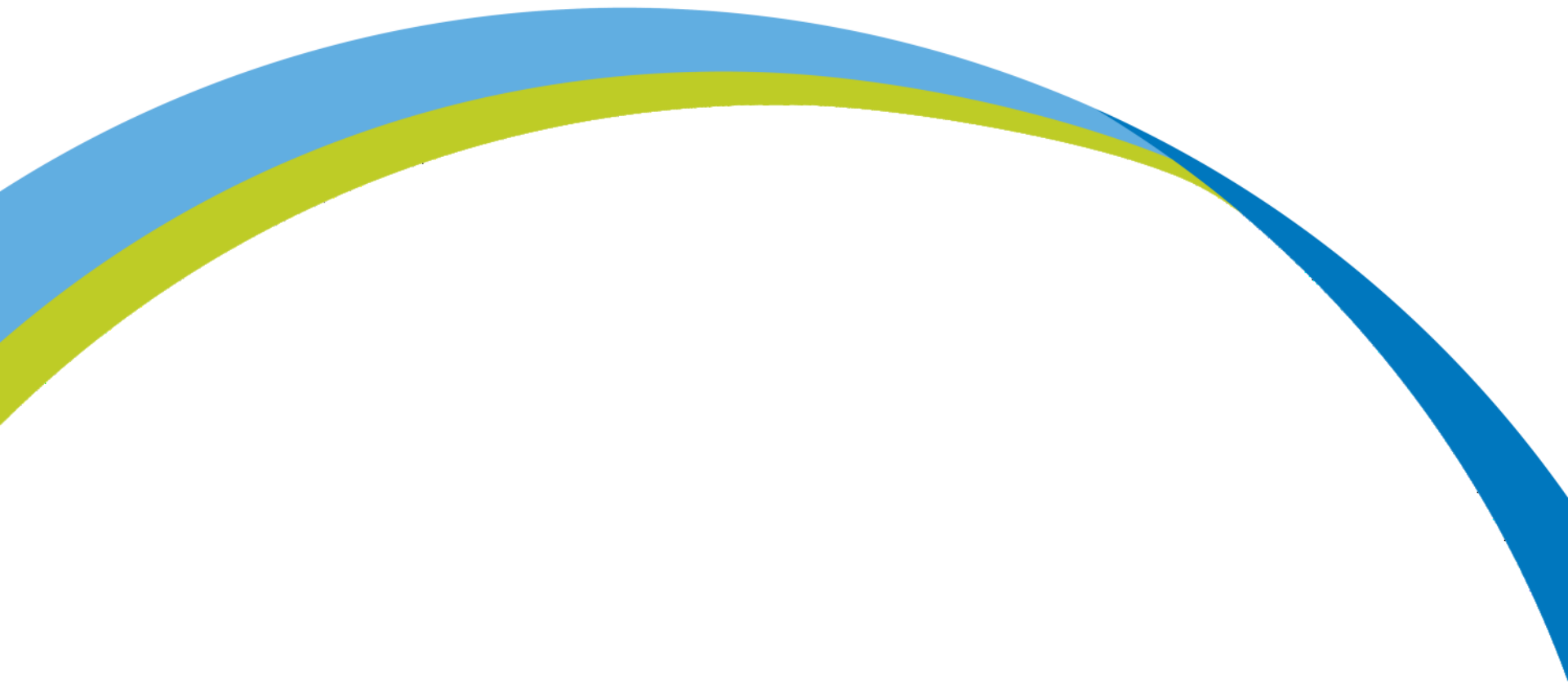
Appendix “C” - Feedback Evaluation Matrix

Issues/Feedback	Vision Ingredients										Total Score
Criteria	Consistency and Certainty	Transparency, Equity, Fairness	Value Added	Timeline	Internal Communication	External Communication	Innovation	Red Tape	Historical Issue	Internal/External Stakeholder Feedback	
Detail	Process change adds Consistency/Certainty to the development Process	Improves transparency, equity and fairness in the development process	Improves the quality of the process or of a development that is a product of the process	Timeline Improvement	Improvement to Internal Communication (Internal process stakeholders)	Improvement to External (customers/community) Communication	Encourages/Promotes Innovation and Flexibility	Removes unnecessary barriers, restrictions, red-tape in the development process	Previously identified in a Development Process Review	Identified in both Internal and External Stakeholder interviews	
Ranking (1-5 Instructions)	0=Not impacted	0=No Improvement	0=No Improvement	1=Long Term Change	No Improvement=0	No Improvement=0	No Impact=0	No Impact=0	Never Identified in the past=0	Not identified by Stakeholders=5	
Weight	5=High Impact	5=High Improvement	5=High Improvement	5=Quick Win Change	High Improvement=5	Large Improvement=5	High Impact=5	Large Impact=5	Identified on more than 1 occasion=5	Identified by both internal and external stakeholders on numerous occasions=5	
	2	2	2	1	2	3	2	2	2	2	
Development Process Structure (Departments, Managers, Staff, Roles and Responsibilities)											
Fragmented file management and workflow confusion. Too many file managers.	5	3	3	4	4	5	1	2	3	5	71
Unclear roles and responsibilities. Unclear decision making authority. Unclear accountability for dispute resolution on some issues	4	5	3	4	3	3	1	4	3	5	69
Vacation Coverage Issues. No one covers files when a staff member is away.	2	1	3	4	2	4	0	0	0	2	36
DP requirements are too onerous, not enough flexibility.	4	4	3	3	1	4	1	4	0	4.5	58
Development Process department structure not set up to properly deliver on ODP Vision or emerging policy/planning issues	3	4	4	1	5	4	3	2	0	3	61
Management communication to staff regarding development process policy/procedure needs a lot of improvement.	4	4	4	2	4	2	3	1	0	2	52
All staff need to take a balanced (sustainable) approach when dealing with files.	4	3	3	4	5	3	3	2	2	3	63
Development Process Administrative Issues (Clerical support, filing, file set-up, file closure, circulation, admin tasks)											
One-Window Application Centre.	4	3	4	4	2	4	1	2	3	3	60
Incomplete applications are accepted and processed by One-Window Application Centre.	4	4	4	4	4	4	0	4	1	3	64
Development Permit waiver sign-off can cause minor delays/confusion at front counter because not enough staff can sign-off.	3	3	5	4	2	4	0	4	1	3	58
Duplicate application submission requirements need to be eliminated.	0	2	2	0	0	1	0	4	1	1	23
Land Use Branch and City Clerk communications breakdowns can cause delays.	4	4	3	4	4	4	0	3	2	2	60
Council format is cumbersome and too lengthy.	0	0	2	1	3	3	0	0	0	1	22
Administrative support in Land Use Management Branch needs improvement.	4	2	4	4	4	4	1	1	2	4	60
Development Process File Management and application processing (File management issues)											
Late hits still occur regularly.	5	5	3	4	1	2	0	4	4	5	64
Pre-Application process can be hit and miss. Level and type of information generated varies from staff to staff and lack of depth can be an issue.	5	5	5	3	4	5	2	3	4	5	84
Subjective design and regulatory feedback by staff needs to be reduced and/or more appropriate in context.	3	4	3	2	2	3	2	2	0	3	49
BCBC issues are identified too long after the BP process has started to allow for timely plan amendments.	4	4	2	4	1	5	0	4	0	3	55
One window phone system needs review and updating.	4	3	4	2	0	5	0	1	0	3	47
Application intake and initial follow-up process is inconsistent. Communication to new applicants is poor.	5	5	4	2	4	5	0	3	3	4	73
Files with negative recommendations from staff are not processed (sent to Council) in a timely manner and are debated too long.	2	3	1	3	0	3	0	2	0	2	32
Process of getting circulation comments to applicants is not standardized and is inconsistent.	4	4	4	3	4	5	1	2	3	3	68
Development process timelines are not clear to staff, file managers and applicants.	5	5	2	5	3	5	0	3	5	4	74
Applicants must duplicate work (extra zone analysis sheet) when submitting development applications.	2	2	1	0	0	1	0	3	0	1	21
Processes for servicing agreements, landscape agreements and performance bonds are not well understood or documented for staff/applicants.	4	4	3	4	4	4	0	3	5	3	68
No protocol for meeting minutes and their circulation.	3	2	4	1	4	5	0	2	4	4	62

Issues/Feedback		Vision Ingredients									Total Score
Criteria	Consistency and Certainty	Transparency, Equity, Fairness	Value Added	Timeline	Internal Communication	External Communication	Innovation	Red Tape	Historical Issue	Internal/External Stakeholder Feedback	
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	5=High Impact	5=High Improvement	5=High Improvement	5=Quick Win Change	High Improvement=5	Large Improvement=5	High Impact=5	Large Impact=5	Identified on more than 1 occasion=5	Identified by both internal and external stakeholders on numerous occasions=5	
Weight	2	2	2	1	2	3	2	2	2	2	
Development Process – Participant attitudes (staff - focus, training, knowledge etc.)											
No apparent Corporate vision for the development process. Why are there no operating policies? Clear and consistent direction is not being provided to staff in the development process.	4	3	4	3	4	5	4	3	0	5	71
A "Facilitator" and results oriented mentality often lacks from staff in the development process. Regulatory approach is primary but shouldn't be.	5	4	4	4	4	4	4	4	2	5	80
Staff is not empowered for quick decision making, facilitation, and issue resolution.	4	4	4	3	3	4	1	2	1	4	61
Zoning bylaw interpretations are not consistent.	2	2	2	2	2	4	3	3	0	2	46
Very limited Planner/Dev Tech exposure to the realities of developer.	4	4	4	3	4	5	2	3	2	5	74
No formal accountability/feedback mechanisms for staff in the development process											
Development Process – Systems/Software (application tracking, circulation, mapping, automation)											
Existing applications online are not spaced correctly to be used.	2	0	3	1	0	1	0	2	0	2	22
Web content and info. needs improvement.	5	5	3	1	1	5	3	2	1	5	66
Electronic Application submissions and payment might be more efficient.	1	1	3	2	1	3	1	1	0	5	37
Very low staff/applicant awareness to Online application tracking capabilities.	4	5	2	2	2	5	0	3	4	5	67
Organizational structure for development process should be on the website.	0	4	0	0	0	4	0	0	0	3	26
Why aren't there any automatic notifications for completed permits?	5	3	1	3	3	5	0	1	0	4	52
Usage/usefulness of available technology on existing Development Application tracking system and website is not understood by staff.	5	4	4	2	5	5	0	2	3	4	71
Development Process - Other											
City transportation feedback and Traffic Impact Study (TIS) process needs to be improved. It is slow and uncoordinated.	3	3	4	5	4	4	2	5	1	5	71
Formal Development Review Team (DRT) and Advisory Design Review team guidelines for staff and developers would help to make it more useful because it is currently confusing for applicants.	4	5	3	3	3	4	3	2	3	4	68
Review professional insurance submission requirements (avoid duplication at BPP). Why does proof of insurance need to be submitted with every application?	1	2	1	1	1	1	0	3	0	1	22
Implement tiered levels of service for Building Permit and Development Application files.	3	1	2	4	1	1	2	1	2	2	35
Update Subdivision and Development Servicing Bylaw (ND 7900) to improve performance.	3	3	4	2	3	3	4	3	2	4	63
Allow staggered BP process so that early zoning and Foundation permit is possible.	1	1	3	3	1	2	1	3	0	2	33
No accountability for site grading from beginning to end of development.	4	4	5	1	4	3	2	1	3	5	66
Customer service could be greatly improved with increased hours of operation at City Hall.	0	0	2	0	0	5	0	3	0	2	29
"Clean-Up" zoning amendment process needs to be improved to reduce delays.	3	3	0	3	0	1	0	4	2	3	36
Official Community Plan document needs to be more of a vision oriented plan and less of a regulatory document. Impossible to meet all policies. Zoning Bylaw is the place for regulation.	4	4	3	1	2	3	2	3	0	4	54
There needs to be a City feedback loop to development industry (what can they do better).	2	1	2	0	0	3	3	1	0	2	31
Why aren't there DEC incentives for entry level housing?	0	0	0	0	0	0	3	2	0	1	12

DEVELOPMENT APPLICATION PROCESS REVIEW (DAPR) ***FINAL REPORT***

May 2013



WHY THE PROCESS REVIEW?

Overall recognition that the existing development process could be improved

- ▶ 2012 Core Services Review
- ▶ 2012 Business Processes Review
- ▶ Council Direction
- ▶ Industry Feedback
- ▶ Community Feedback
- ▶ Partial Implementation of Prior Reviews



DAPR PROJECT TEAM

- ▶ Multi-Disciplinary team with experience in many parts of the development application process
- ▶ Public and private sector experience
- ▶ Ryan Smith
- ▶ Abigail Riley
- ▶ Doug Patan
- ▶ Jordan Hettinga
- ▶ Bernard Burgat
- ▶ Sponsor:
Doug Gilchrist

VISION / OBJECTIVES

- ▶ Communication
- ▶ Timing / Timelines
- ▶ Flexibility / Innovation
- ▶ Equity / Fairness
- ▶ Consistency / Certainty
- ▶ Transparency
- ▶ Professionalism
- ▶ Quality / Value Added



PROCESS REVIEW METHODOLOGY

Phase 1
Project Charter

Project Team
Selected

Objectives
Workshop

Best Practices
Research &
Recommendation
Development

Interview Issues
Reconciliation
& Matrix Analysis

Stakeholder
Interviews and
Survey

DAPR Report
Review

Report
Presentation to
Staff and Council

Phase 2
Implementation

RECOMMENDATIONS

- ▶ Recommendations grouped under broad theme
- ▶ Recommendations are not hierarchical in order
- ▶ Some are structural, some are process/policy oriented

RECOMMENDATIONS

Objectives, Vision, Culture

- ▶ Management focus on empowering file managers
- ▶ Creation of Development Application Process Policy and Operations Manual

Structure

- ▶ Single File Manager Approach
- ▶ Improve Admin Support for LUM Department
- ▶ Single point decision making on development application files
- ▶ Implementation function
- ▶ Strategic planning projects function/priority process

RECOMMENDATIONS

Accountability

- ▶ Documented dispute resolution processes
- ▶ Standard timelines
- ▶ Code of Conduct
- ▶ KPI's

Pre-Application/One-Window

- ▶ Increase formality of pre-app processes
- ▶ Standardized inquiry and response templates
- ▶ Scoping Checklists

RECOMMENDATIONS

File Management/ Communication

- ▶ Improved DA System Inputs
- ▶ Standardized customer contact milestones
- ▶ Email and letter template updates
- ▶ Complete Applications

Website/ Electronic File Management

- ▶ Online applications tracking
- ▶ Monthly stats online
- ▶ Web content improvements
- ▶ Updated DA System training

RECOMMENDATIONS

Community Communications

- ▶ Comprehensive Community Communications Approach
- ▶ Planning 101 Courses

“Outside the Box”

- ▶ Youtube ‘how to videos’
- ▶ Preferred Applicant list
- ▶ Smart phone app for development tracking

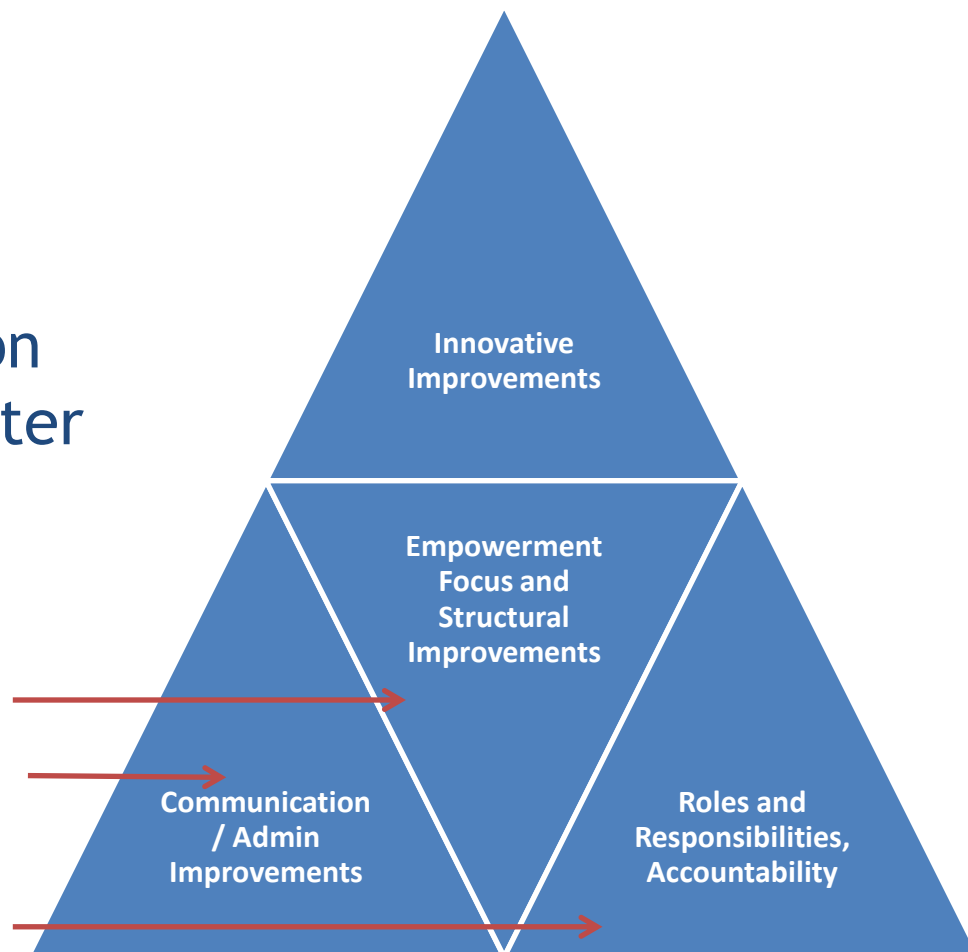
IMPLEMENTATION STRATEGY

- ▶ **Dedicated Implementation Function**
 - ▶ Lead on-going DAPR improvements
 - ▶ Report to GM of Community Sustainability
 - ▶ Benefit - long-term accountability
- ▶ **Resources**
 - ▶ Existing (re-purposed) resources / repatriated vacant position

IMPLEMENTATION STRATEGY

- ▶ Estimated 2-3 years implementation
- ▶ Year 1 implementation strategy project charter to be created

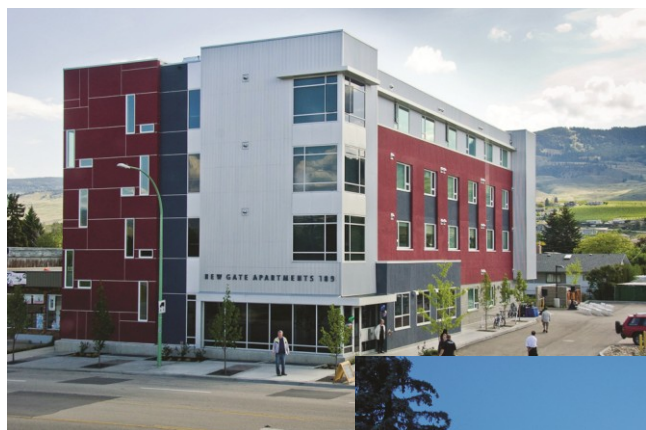
1st year recommended implementation are those items which are 'foundational' to how we do business



WHAT ABOUT OTHER IDEAS/SUGGESTIONS?

- ▶ On-going improvement and innovation is very important
- ▶ Staff, Council and customers are encouraged to continue to pass along ideas and examples of great practices

THANK YOU/QUESTIONS?



Report to Council



Date: Date
Rim No. 1350-90
To: City Manager
From: Engineering Traffic Technician, Transportation & Mobility
Subject: Ellis Street Truck Route (SR 243150)

Recommendation:

THAT Council direct staff to, once associated road network improvements have been undertaken as detailed in the May 14, 2013 report from the Engineering Traffic Technician, to complete a new traffic order to remove Ellis Street as a truck route;

AND THAT Council direct staff to submit 2014 budget requests to fund the road network improvements necessary to close Ellis Street to heavy truck traffic, as detailed in the May 14, 2013 report from the Engineering Traffic Technician.

AND FURTHER THAT Council direct staff to inform the public prior to implementing removal of the Ellis Street truck route.

Purpose:

The purpose of this report is to provide Council with information related to discussions with BC Ministry of Transportation and Infrastructure (MoTI) staff regarding potential upgrades to the intersection of Harvey Avenue (Highway 97) and Gordon Drive to accommodate closure of Ellis Street to heavy truck traffic; to report back on input from affected businesses, residents, and stakeholders; and to provide a recommendation to Council regarding the potential closure of the Ellis Street truck route.

Background:

In response to Council's earlier direction (November 14, 2012), City staff sent a mail-out notice to 1600 residents in the Gordon Drive area and 350 businesses/property owners in the industrial North End with background information on the Ellis Street Truck Route and asked for input on its potential closure. The City also advertised the potential closure via the Capital News, the City's main website and social media channels. In total, approximately 115 responses were received (please see section titled External Agency/Public Comments for details).

City staff have also consulted MoTI staff with regards to accommodating the extra truck traffic along the Highway to Gordon Drive (please see section titled External Agency/Public Comments for details on the response).

The Downtown core attracts a great deal of pedestrian activity. It has proven difficult to provide for pedestrian-friendly intersections while also designing for the large turning radii required for trucks. The fact that buildings in the downtown are usually constructed to the property line and that newly constructed buildings have typically been at least four storeys tall has resulted in a noise environment that is uncomfortable for pedestrians. The Downtown Plan suggests that priority should be given to making the Downtown more pedestrian friendly. Achieving this goal requires addressing the impact of truck traffic. Making the downtown more pedestrian friendly will also increase opportunities for commercial use of sidewalk areas. Ellis Street will soon become a much busier street. Full build-out of the approved Monaco towers in addition to the anticipated construction of the IHA tower and two additional parkades will add significant traffic volumes. The higher traffic volumes, combined with multiple currently existing traffic control signals will, over time, render Ellis Street increasingly unsuitable for truck traffic. The travel time advantages experienced by truck traffic now using Ellis Street rather than the existing truck route on Gordon Drive will likely, over time, disappear.

Gordon Drive, which is an existing truck route between the Highway and the North End, provides for four lanes of traffic. Given current traffic volumes, all four lanes are not required during off-peak hours. As such, parking is permitted in the outside lanes north of Bernard Ave. during off-peak hours. It is anticipated that even if Gordon Drive takes additional truck volumes, off-peak hour parking can continue to be provided. To more clearly communicate this arrangement, staff recommend pavement markings for parking stalls along Gordon Drive and improved signage. Over time, it may be necessary to remove off-peak hour parking along Gordon Drive, but in the interim, it is supported as a way to maximize use of the road right of way.

External Agency/Public Comments:

Staff received 115 responses to mailed letters and media outreach. Approximately 50 respondents were opposed and 40 were supportive of the Ellis Street truck route closure with the rest of the responses being general comments. Three petitions (with a total of 407 signatures) were submitted to Mayor and Council asking to close the Gordon Drive truck route and one online petition (with 373 signatures) was in favour of eliminating the Ellis Street truck route.

The majority of the comments from residents in close proximity to Gordon Drive related to concerns about excessive noise, the number of residences along Gordon Drive, lack of crosswalks/traffic signals along Gordon Drive, the lack of bicycle lanes, the conflicts due to parking along Gordon Drive, trucks idling at Bernard Avenue/Gordon Drive so drivers can run into the convenience store, the speed of trucks along Gordon Drive, safety issues, and high numbers of elderly pedestrians with limited mobility. Feedback from companies with high volumes of truck traffic from the City's industrial north end noted the extra costs associated with longer travel times/distance. For some, alternative routes are already being used and these firms were accepting of the truck route closure. Some of the specific issues to come from the North End businesses related to business and revenue impacts associated with re-

routing truck traffic to a slightly longer route, the loss or reduction in trips/deliveries and extra travel times with potential congestion along the Highway. Some businesses expressed concern about the lack of a protected left turn for the Gordon Drive/Highway 97 intersection and the sharp turning radius at Clement Avenue/Gordon Drive intersection. Staff are recommending changes to address these concerns (see Financial and Budgetary Considerations section).

The Downtown Kelowna Association (DKA), as part of the Downtown Plan consultation, advocated for the City to close Ellis Street to heavy trucks.

The majority of responses that were in favour of the Ellis Street truck route closure understood the difficulty in eliminating the truck route and also appreciated that this will benefit the downtown district.

City staff have been in consultation with MoTI staff with regards to accommodating the extra truck traffic along the Highway to Gordon Drive. MoTI have suggested lengthening the left turn storage lane on Highway 97 at Gordon Drive to 120m in length to accommodate the anticipated truck traffic. As part of the Highway 97 Left Turn Study, the intersection of Highway 97 & Gordon Drive will have an advanced left turn arrow Eastbound along the Highway turning Northbound onto Gordon Drive.

Financial/Budgetary Considerations:

Implementation costs include:

- a) Adding a protected/permissive northbound left turn to Gordon Drive for east-bound Highway 97 traffic that is already budgeted for as part of the Highway 97 Left Turn Study;
- b) Lengthening the eastbound to northbound left turn bay from Highway 97 to Gordon Drive, at a cost of approximately \$120,000;
- c) Accommodating a right turn lane from Clement Avenue to Gordon Drive to better accommodate truck turning movements, at a cost of approximately \$290,000.
- d) Signage improvements along Gordon Drive \$2,000

Estimated construction costs are based on preliminary design estimates and will, upon detailed design, be further reviewed with MoTI. Budget already exists for item a. but items b., c. and d. are currently unfunded. It is recommended that the closure of Ellis Street to truck traffic not take place prior to completion of the improvements noted in items b., c. and d. As budget is not currently available for these items, the earliest these measures could be completed would be in 2014, subject to 2014 budget approval.

Existing Policy:

Consolidated Traffic Bylaw 8120; Part 5 - Highway Use Regulations identifies truck routes. In order to facilitate a truck route closure, this traffic bylaw would need to be amended to remove Ellis Street as a truck route.

Legal/Statutory Procedural Requirements:

- Signs would have to be posted at relevant locations to indicate the change in the hours of operation as per BC Motor Vehicle Act Part 3; Section 124 - Municipal Powers.
- A traffic order would have to be signed by the Traffic Supervisor to notify the RCMP and City Bylaw regarding the change in operation as per Traffic Bylaw 8120.

Internal Circulation:

A/General Manager, Community Sustainability
General Manager, Community Services
Director, Civic Operations
Director, Regional Services
Director, Policy & Planning
Director, Communications
Director, Finance
Manager, Transportation Services
City Clerk, Corporate Services
Roadways Projects Manager, Regional Services
Planner Specialist, Infrastructure Planning
Traffic Supervisor, Transportation Services
Traffic Technician, Transportation Services
Marketing & Communications Advisor, Communications
RCMP

Communications Comments:

We would recommend the following channels for communicating the closure to the Ellis Street Truck route to users:

- Signage at Highway 97 and Ellis turn-off (both directions) in consultation with MOTI
- Direct mail to north end businesses and other identified stakeholders impacted by route closure
- City in action ad indicating timing of closure
- Road Report news release and e-Subscribe mail-out
- Updated kelowna.ca website information relating to Designated Truck Routes

Considerations not applicable to this report:

Legal/Statutory Authority:

Personnel Implications:

Alternate Recommendation:

Submitted by:

B. Oliveira, Engineering Traffic Technician, Transportation & Mobility

Approved for inclusion:



S. Bagh, Director, Infrastructure Planning (Acting)

cc: A/General Manager, Community Sustainability
General Manager, Community Services
Director, Civic Operations
Director, Regional Services
Director, Policy & Planning
Director, Communications
Director, Finance
RCMP

Report to Council



Date: May 15, 2013
Rim No. 1405-01
To: City Manager
From: Director, Financial Services
Subject: Transit 2013/2014 Annual Operating Agreements

Recommendation:

THAT Council approves the 2013/2014 Annual Operating Agreements for conventional and custom transit services for the City of Kelowna;

AND THAT the Mayor and City Clerk be authorized to execute the Operating Agreements between BC Transit, the City of Kelowna and FirstCanada ULC covering the period April 1, 2013 to March 31, 2014;

AND THAT Council approves the amendment to the 2012/2013 Annual Operating Agreement for conventional transit;

AND THAT the Mayor and City Clerk be authorized to execute the amended Operating Agreement between BC Transit, the City of Kelowna and FirstCanada ULC covering the period April 1, 2012 to March 31, 2013.

Purpose:

To provide Council with information on Transit costs for the current year and receive Council authorization to sign the Annual Operating Agreements for the current year along with the amended agreement for last year.

Background:

Conventional Transit Service

The total costs under this agreement for the 2013 fiscal year for the regular conventional transit is estimated to be \$18,835,100, a 2.2% increase compared to the 2012 amended Annual Operating Agreement. This is for a total of 153,819 service hours, similar to the 2012 level of service. For the Community Bus program the cost estimate for 2013 is \$1,814,700 an increase of 9.9% but includes an increase of 1,093 service hours. The main areas of cost increase are in relation to driver wages & benefit costs, increased vehicle fuel & tire costs, fleet maintenance and vehicle lease costs. There is a reduction for the conversion away from HST.

Transit ridership for the period is forecast similar to 2012 at 4,740,700 passengers with revenues projected to increase slightly. Overall there is a \$319,400 increase in local cost requirements and a \$215,300 increase in BC Transit's cost share. Cost recovery is estimated at 26.6% for 2013 down from 27.2% in the amended 2012 budget.

This agreement covers the annualization of the 2012 expanded service for September 2012. An AOA amendment will be required for any additional improvement in service levels during 2013.

The City of Kelowna is responsible for \$4.5 million of the estimated \$6.4 million net Municipal Share of the regional Conventional Transit program.

Custom Transit Service

The total costs under this agreement for the 2013 fiscal year are estimated to be \$2,791,600 (excluding Peachland Paratransit), which is a 1.6% increase from the 2012 operating budget. The cost adjustment is primarily due to inflationary increases, an increase in vehicle debt costs and a reduction in maintenance contingency and contract HST.

Passengers for the period are forecast at 164,800 (increase of 7.3%) with revenues increasing by \$27,300. Net municipal share is increased by \$25,000 for 2013 while BC Transit's share decreases by \$8,400 due to their debt costs being recorded elsewhere. Cost recovery is estimated at 9.1%, up from the 8.3% level estimated for 2012.

The City of Kelowna is responsible for \$623,800 of the estimated \$846,400 net Municipal Share of the Custom Transit program.

Attached are Information & Performance Summaries for the Regional Conventional, Community and Custom Transit operations. These schedules outline some of the changes to the current year operating agreement for costs and revenues as well as performance information. Also included are conventional transit revenue and cost comparisons for the 2005 to 2012 period.

A further request is for the approval of an amendment to the 2012/13 Conventional Transit Annual Operating Agreement. This amendment covers the conventional transit changes that occurred last September, including items related to the City of Kelowna and also our regional partners:

- The new Quail Ridge route #13
- Adding the Kelowna overload hours to the base program
- Introduction of late night service on route #97
- Adding time to route #1 for schedule reliability
- Rapid Bus between Queensway and Westbank Town Centre
- Expanded service on Lake Country route #23
- Changes to service levels in West Kelowna

The amendment was received at the City last October but there were adjustments required to both the cost sharing numbers and the revenue share. These adjustments were not resolved until February, 2013. The impacts of these changes were estimated for our 2012 year end accrual and they will be invoiced in 2013.

Internal Circulation:

Director, Regional Services
Regional Programs Manager

Legal/Statutory Authority:

Annual Operating Agreement is required to authorize funding for payment of transit contractor.

Financial/Budgetary Considerations:

Existing budget provides for these Annual Operating requirements.

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by:

K. Grayston, Director, Financial Services

Approved for inclusion:



General Manager, Corporate Sustainability

cc: Director, Regional Services
Regional Programs Manager
Revenue Manager

Information & Performance Summary				
Kelowna Conventional Transit				
Kelowna Regional Kelowna Regional				
Amended AOA Official AOA Variance				
	2012/2013	2013/2014	\$	%
ANNUAL OPERATING AGREEMENT				
BUDGET SUMMARY				
Total Costs	\$18,421,435	\$18,835,143	\$413,708	2.2%
Total Revenue	\$5,466,350	\$5,499,946	\$33,596	0.6%
BCT Share of Costs	\$7,550,235	\$7,717,824	\$167,589	2.2%
Net Municipal Share	\$5,126,371	\$5,330,538	\$204,167	4.0%
PERFORMANCE SUMMARY				
Level of Service				
Population Served	129,864	131,162	1,298	1.0%
Number of Vehicles in Service	64	64	0	0.0%
Revenue Hours of Service	153,611	153,819	208	0.1%
Effectiveness				
Annual Revenue Passengers	4,694,148	4,740,700	46,552	1.0%
Conventional	4,694,148	4,740,700	46,552	1.0%
Total Revenue Passengers per Capita	36.1	36.1	0	0.0%
Total Passengers per Hour	31	31	0	0.9%
Total Cost per Passenger	\$4.28	\$4.36	\$0.05	1.1%
Cost Recovery (including Community)	27.23%	26.63%		-0.6%
Efficiency				
Total Operating Cost per Revenue Hour	\$105.27	\$107.46	\$2.19	2.1%
Total Cost of Service per Revenue Hour	\$119.92	\$122.45	\$2.53	2.1%

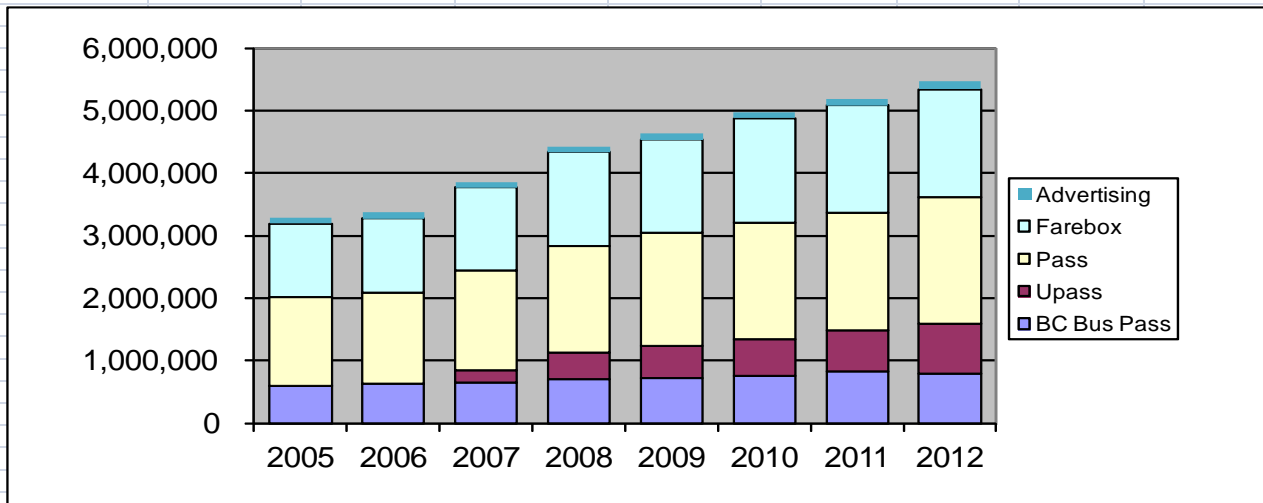
Information & Performance Summary				
Kelowna Community Bus				
	Official AOA	Official AOA	Variance	
	2012/2013	2013/2014	\$	%
ANNUAL OPERATING AGREEMENT				
BUDGET SUMMARY				
Total Costs	\$1,651,113	\$1,814,736	\$163,623	9.9%
BCT Share of Costs	\$663,168	\$710,893	\$47,725	7.2%
Net Municipal Share	\$967,067	\$1,082,337	\$115,270	11.9%
PERFORMANCE SUMMARY				
Level of Service				
Population Served	129,864	131,162	1,298	1.0%
Number of Vehicles in Service	8	8	0	0.0%
Revenue Hours of Service	21,395	22,488	1,093	5.1%
Efficiency				
Total Operating Cost per Revenue Hour	\$66.39	\$67.71	\$1.32	2.0%
Total Cost of Service per Revenue Hour	\$77.17	\$80.70	\$3.53	4.6%

Information & Performance Summary				
Kelowna Regional Custom				
	Official AOA	Official AOA	Variance	
	2011/2012	2012/2013	\$	%
ANNUAL OPERATING AGREEMENT				
BUDGET SUMMARY				
Total Costs	\$2,746,491	\$2,791,608	\$45,117	1.6%
Total Revenue	\$227,500	\$254,760	\$27,260	12.0%
BCT Share of Costs	\$1,655,102	\$1,646,664	-\$8,438	-0.5%
Net Municipal Share	\$821,395	\$846,416	\$25,021	3.0%
PERFORMANCE SUMMARY				
Level of Service				
Population Served	186,700	188,567	1,867	1.0%
Registered Users	1,750	1,750	0	0.0%
Number of Vehicles in Service	22	22	0	0.0%
Revenue Hours of Service	35,910	36,300	390	1.1%
Effectiveness				
Annual Revenue Passengers	153,617	164,759	11,142	7.3%
Custom/Para - Vans	118,161	126,531	8,370	7.1%
Custom/Para - Taxi Supplement	11,839	12,250	411	3.5%
Taxi Saver	23,617	25,978	2,361	10.0%
Van Passengers per Revenue Hour	3.3	3.5	0.2	5.9%
Total Cost per Passenger	\$17.88	\$16.94	-\$0.94	-5.2%
Cost Recovery	8.28%	9.13%	0.01	10.2%
Efficiency				
Total Operating Cost per Revenue Hour	\$69.11	\$68.02	-\$1.09	-1.6%
Total Cost of Service per Revenue Hour	\$76.48	\$76.90	\$0.42	0.6%

KELOWNA REGIONAL TRANSIT SYSTEM

Conventional Transit

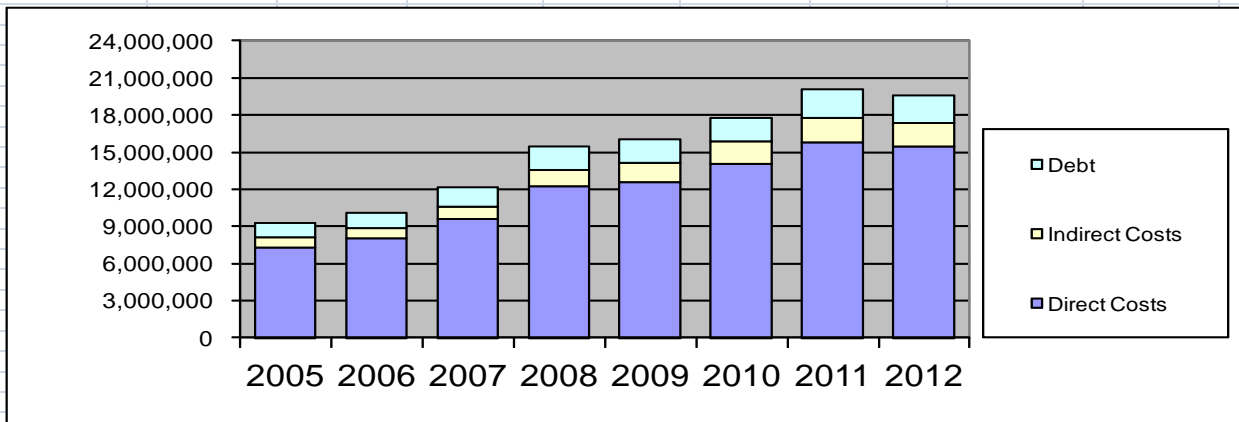
Revenues



	2005	2006	2007	2008	2009	2010	2011	2012
BC Bus Pass	590,208	636,080	642,031	693,224	723,981	747,027	819,938	782,838
Upass			201,207	433,904	506,519	589,850	663,734	813,796
Pass	1,418,803	1,444,836	1,594,970	1,712,729	1,809,912	1,860,079	1,876,993	2,009,193
Farebox	1,179,358	1,189,528	1,328,437	1,493,307	1,488,070	1,681,385	1,724,878	1,730,694
Advertising	95,695	104,259	90,000	93,000	96,000	99,000	102,000	123,735
Total	3,284,064	3,374,703	3,856,645	4,426,164	4,624,482	4,977,341	5,187,543	5,460,256

KELOWNA REGIONAL TRANSIT SYSTEM

Expenditures



	2005	2006	2007	2008	2009	2010	2011	2012
Direct Costs	7,281,475	8,005,899	9,588,939	12,213,064	12,587,501	14,032,398	15,795,667	15,435,583
Indirect Costs	844,228	867,721	1,009,417	1,323,769	1,519,451	1,831,169	2,001,793	1,946,786
Debt	1,134,283	1,236,321	1,561,656	1,920,169	1,970,773	1,880,359	2,254,781	2,206,424
Total	9,259,986	10,109,941	12,160,012	15,457,002	16,077,725	17,743,926	20,052,241	19,588,793
Service Hours	113,465	115,373	141,603	160,377	171,339	176,318	179,519	176,007
Cost per Hour	\$ 81.61	\$ 87.63	\$ 85.87	\$ 96.38	\$ 93.84	\$ 100.64	\$ 111.70	\$ 111.30
Recovery %	35.5%	33.4%	31.7%	28.6%	28.8%	28.1%	25.9%	27.9%

Report to Council



Date: May 17, 2013

Rim No. 1140-53

To: City Manager

From: R. Forbes, Manager, Property Management

Subject: LICENSE OF OCCUPATION - City of Kelowna to Callahan Construction Company Ltd. and 3720 Investments Ltd. (Mission Park Shopping Centre)

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a ten (10) year License of Occupation, with Callahan Construction Company Ltd. and 3720 Investments Ltd. (collectively referred to as "Callahan"), for Callahan's use of City-owned property for signage with the option to renew for an additional ten (10) year term, in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND THAT Council approves the City entering into a ten (10) year License of Occupation with Callahan Construction Company Ltd. and 3720 Investments Ltd. (collectively referred to as "Callahan"), for the City's use of Callahan property for a bus shelter with the option to renew for an additional ten (10) year term, in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the License of Occupations.

Purpose:

To provide a License of Occupation for a bus shelter that furthers the development of the RapidBus service.

Background:

The City owns property on Richter Street adjacent to the Mission Park Shopping Centre and currently utilized as greenspace and overflow parking. The property is approximately 1,600 sq.ft. in size. Callahan has constructed an addition to the shopping centre facing Richter Street and has requested a License of Occupation from the City to utilize this space for signage for the new shopping centre addition.

The City and Callahan have also been in negotiations for the City's use of Callahan property on Lakeshore Road fronting Mission Park Shopping Centre for enhancements to the existing

bus shelter. Callahan and the City have agreed to a reciprocal License of Occupation in favour of the City to increase the size and configuration of this shelter to accommodate the changes to the RapidBus Program that will continue to emphasize active transportation and transit along Lakeshore Road.

These License of Occupations represent the Corporate Focus of Sustainable City in that we deliver on a multiple bottom line, balancing community priorities with resource realities to create a safe, vibrant and sustainable city.

Internal Circulation:

Regional Programs Manager, Regional Services
Regional Projects Manager, Regional Services
Active Transportation Coordinator, Regional Services
Manager, Urban Land Use

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Financial/Budgetary Considerations:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of these License of Occupations.

Submitted by:

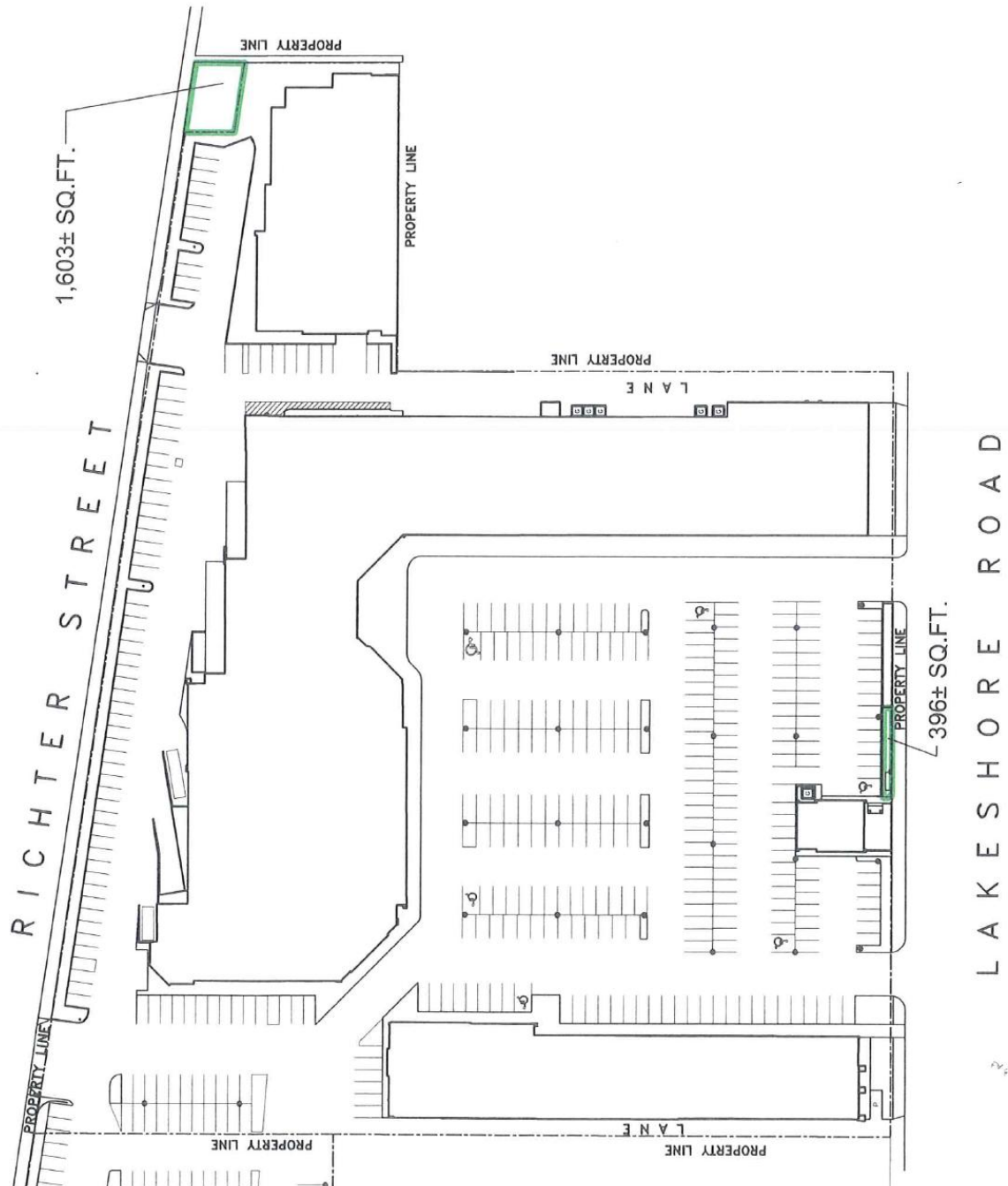
Ron Forbes, RPA
Manager, Property Management

Approved for inclusion:



D. Edstrom, Acting Director,
Real Estate & Building Services

cc: J. Dombowsky, Regional Programs Manager, Regional Services
A. Albiston, Regional Projects Manager, Regional Services
M. Kittmer, Active Transportation Coordinator, Regional Services
D. Noble, Manager, Urban Land Use



LICENCE OF OCCUPATION

THIS AGREEMENT dated for reference the day of May, 2013

BETWEEN:

CITY OF KELOWNA, a municipal corporation having its
office at 1435 Water Street, Kelowna, BC., V1Y 1J4
Facsimile Number 250-862-3349

(the "City")

OF THE FIRST PART

AND:

CALLAHAN CONSTRUCTION COMPANY LTD., a company
incorporated in the Province of British Columbia and having its
office at Suite 216 – 1626 Richter Street, Kelowna, BC, V1Y 2M3
Facsimile Number 250-317-3000.

AND

3720 INVESTMENTS LTD., a company incorporated in the Province
of British Columbia and having its office at Suite 216 – 1626 Richter Street,
Kelowna, BC, V1Y 2M3 Facsimile Number 250-317-3000.

(collectively the "Licensee")

OF THE SECOND PART

WHEREAS:

- A. The City is the owner of approximately 1603 sq. ft. of property (the "City's Property") adjacent to property owned by the Licensee in the Mission Park Shopping Centre, which property of the Licensee has a civic address of 3200 Richter Street, in the City of Kelowna, legally described as:

Parcel Identifier: 023-029-331
Lot 2 District Lots 14 and 135 OSOYOOS DIVISION YALE DISTRICT
PLAN KAP 54407

(the "Property");

- B. The Licensee wishes to landscape and erect a sign and perform other works (the "Works") on the City's Property, which 1603 sq. ft. is outlined in green on diagram 1 of 3 and by a dotted green line on diagrams 3 of 3, both attached hereto as Schedule "A" (the "Licence Area");
- C. The City is prepared to grant the Licensee a Licence of Occupation pursuant to Section 35(11) of the *Community Charter*, S.B.C. 2003, c.26 for a term of 10 years over the Licence Area to enable the Licensee to complete the Works.

NOW THEREFORE in consideration of the payment of Ten (\$10.00) Dollars, and other good and valuable consideration, from the Licensee to the City, the receipt and sufficiency of which are hereby acknowledged, the City and the Licensee covenant and agree as follows:

1. **Grant** – The City grants to the Licensee the non-exclusive right and licence to enter onto and use the Licence Area for the purposes of completing the Works.
2. **Additional Rights** – For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery and equipment.
3. **Signage** - For the term of the Licence and any Renewal Period, the Licensee will have the exclusive right to determine what will appear on any signage erected on the Licence Area. All signage must be approved pursuant to the City of Kelowna's Sign Bylaw.
4. **Term** – The duration of this Agreement and Licence herein granted shall be for a term of 10 years commencing on the date of execution of this Agreement, unless earlier terminated in accordance with Section 18 below.
5. **Extension** – The term of this Licence of Occupation may be renewed for a further 10 year period (the "Renewal Period") upon written agreement by the City and the Licensee.
6. **State of Licence Area at Termination** – In the event that this Agreement expires or terminates for any reason, the Licensee will cease all occupation of the Licence Area and will remove all equipment, chattels, fixtures, buildings and other improvements, including any signage from the Licence Area. The Licensee will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. In the event that the Licensee fails to remove any equipment or chattels upon termination of this Agreement then the City may do so and recover the expense thereof from the Licensee. All buildings, improvements and fixtures remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.
7. **Non-exclusive Use** – The Licensee agrees that:
 - (a) the rights granted under this Agreement do not constitute any interest in the Licence Area or entitle the Licensee to exclusive possession of the Licence Area;
 - (b) the Licensee's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.
8. **No Waste or Nuisance** – The Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
9. **Terms and Conditions** – The Licensee will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. The Licensee acknowledges that the fact that the Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.

10. **Maintenance** – The Licensee will at its own expense keep the Licence Area in a safe, clean and tidy condition, and will erect boarding and fencing around the Licence Area prior to any construction.
11. **Compliance with Laws** – The Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
12. **Inspection by the City** – The City may review and inspect the Licence Area and the Works which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.
13. **No Transfer** – The rights granted to the Licensee under this Agreement may not be sub-licensed, assigned or otherwise transferred unless agreed to in writing by the parties hereto.
14. **Risk** – The Licensee accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by the Licensee, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or the use and occupation of the Licence Area except in the case of negligence or wilful act or omission by the City, its employees, agents or invitees.
15. **Indemnity** – The Licensee will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this Licence or any occurrence on or around the Licence Area during the term of this Licence, or by use or occupancy of the Licence Area by the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee is responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
16. **Release** – The Licensee hereby releases and forever discharges the City, its elected officials, officers, employees, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or in equity, including without limitation any claim under the *Property Law Act* (collectively “Claims”), which the Licensee may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licensee’s use of the Licence Area, except claims arising from the exclusive negligence of the City.
17. **Insurance** – During the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee and the City under this Agreement in an amount not less than \$5,000,000.00 per occurrence. The Licensee will provide the City with proof of insurance at the time of execution of this Agreement and at other times upon request.

18. **Termination** – The City reserves the right to terminate this Agreement if the Licensee breaches any of its obligations under this Agreement and fails to remedy the breach within thirty (30) business days of receiving written notice of the breach from the City. The City will not be liable to compensate the Licensee for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
19. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the City Clerk.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a business day, the next day that is a business day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

20. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.
21. **Severance** – If any portion of this Agreement is held invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.
22. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.
23. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee will not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
24. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.

25. **General –**

- (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors;
- (b) The Schedules attached to this Agreement form part of this Agreement;
- (c) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement;
- (d) Time is of the essence of this Agreement
- (e) This Agreement must be construed according to the laws of the Province of British Columbia.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this Agreement below on the dates written below.

SIGNED, SEALED & DELIVERED by the)
CITY OF KELOWNA, in the presence of:)

_____))
Signature of Witness as to both signatures)

_____))
Print Name)

_____))
Address)

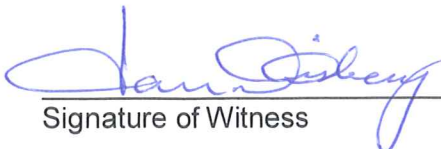
_____))
Occupation)

CITY OF KELOWNA by its authorized
signatories:

_____))
Mayor

_____))
City Clerk

SIGNED, SEALED & DELIVERED by
CALLAHAN CONSTRUCTION COMPANY
LTD. by its authorized signatories
in the presence of:)

_____))
Signature of Witness)

IAN D. DISBERY_____))
Print Name)

SUITE 218 - 1626 RICHTER ST._____))
Address)


LAWYER._____))
Occupation)

_____))
Print Name: BOB CALLAHAN

_____))
Print Name:

**SIGNED, SEALED & DELIVERED by
3720 INVESTMENTS LTD.**

by its authorized signatories in the
presence of:



Signature of Witness

IAN D. DISBERY

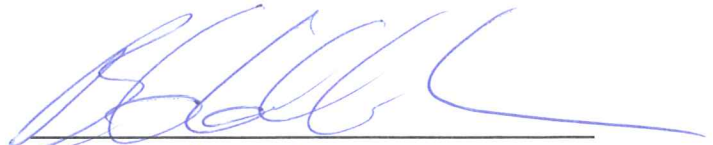
Print Name

SUITE 218 - 1626 RICHTER ST.

Address

LAWYER.

Occupation



Print Name: BOB CALLAHAN

Print Name:

[illegible]

LAKESHORE ROAD

3 OF 1



DRAWING: PARTIAL SITE PLAN PROPOSED "LICENCE OF OCCUPATION"		DRAWN BY: BW	CHECKED BY:
PROJECT: MISSION PARK OFFICE DEVELOPMENT		DATE: 25-04-2013	SCALE: N.T.S.
3200 RICHTER STREET KELOWNA, B.C.		PROJECT NO.:	DRAWING NO.:
218 - 1626 Richter Street, Kelowna, B.C. V1Y 2M3 Ph: (250) 717-3000 Fax: (250) 717-3400 Email: leasing@callahanpg.ca		3 OF 3	

Report to Council



Date: May 17, 2013

Rim No. 2380-20

To: City Manager

From: Ron Forbes, Manager, Property Management

Subject: Concession and Vendor Bid Awards

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a three (3) year contract, with two (2) one (1) year options to renew with Vietnam Village, to provide mobile concession services at City Park Cold Sands Beach (Site A) on Abbott Street, in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND THAT Council approve the City entering into a three (3) year Contract, with two (2) one (1) year renewal options with Una Mak, to provide concession services at the Ben Lee Park concession on Houghton Road (Site B), in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND THAT Council approve the City entering into a three (3) year Contract, with two (2) one (1) year renewal options with 096796 BC Ltd. dba Waterfront Park Beach Rentals, to provide activity concession services at Waterfront Park (Tugboat Bay) on Water Street (Site C), in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND THAT Council approve the City entering into a one year (1) year Contract, with four (4) one (1) year renewal options with Telemark Sports Inc., dba Fresh Air, to provide activity concession services at the foot of Queensway Street (Site D), in the form attached to the Report of the Manager, Property Management, dated May 17, 2013;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute all documents associated with the contracts.

Purpose:

To obtain Council endorsement to award activity and food concessions and a mobile vending contract to operate concessions at City Park, Ben Lee Park, Waterfront Park and Queensway Street.

Background:

The Property Management branch of Real Estate & Building Services department issued Requests for Proposals for four (4) concession and vending operations as shown on the attached map (Schedule A) and located at:

- Site A - City Park (seasonal May-Sept)
- Site B - Ben Lee Park (seasonal May-Sept)
- Site C - Waterfront Park (seasonal May-Sept)
- Site D - Queensway Street (seasonal May-Sept)

In April 2013, staff offered bid packages for the four locations on the City's website, the e-Subscribe email service, as well as advertising in the local newspaper. An optional information meeting was held for all four opportunities with closing dates for the sealed bids of 3:00pm, April 19, 2013. Bids were then evaluated independently by a staff selection committee which led to the recommendations above.

Bids were evaluated on the following criteria: (1) relevant experience, qualifications and successes (2) proposed food or rental items and proposed prices (3) overall proposal for operating a high quality, service oriented venture and (4) total value to the City.

Summary of Concession Opportunities recommended to be awarded:

Vietnam Village (Site A)

Vietnam Village will be operating a food truck located beside the washroom building currently under construction in City Park. In planning for the washroom building, Property Management staff worked with Infrastructure Planning staff to ensure that the plaza area would be strong enough to support the weight of food trucks and that electrical services would be available. Vietnam Village will follow the Healthy Choices guidelines which were part of the bid requirements.

The plan was for one food truck for 2013 and for an additional two food trucks in 2014.

Ben Lee Park (Site B)

Una Mac has provided the food concession services at Ben Lee Park since 2002. She follows the Healthy Choices guidelines which were part of the bid requirements.

Waterfront Park (Site C)

Waterfront Park Beach Rentals will be providing rentals of stand up paddleboards (SUP), Kayak, Peddle Boats, and Hydro Bikes for rent. The main operator is a Paddle Canada Certified Instructor for both Flat Water and Advanced Water SUP lessons as well as being a personal trainer, SUP Yoga Instructor and SUP fitness instructor.

Queensway Street (Site D)

Fresh Air will be providing bike rentals at the foot of Queensway out of a modified container. The container will be installed at the start of the season and removed at the end of the season.

Financial/Budgetary Considerations:

Vietnam Village:

\$3,000 per year in 2013, and \$4,000 per year in 2014 and 2015. This is a new concession for 2013.

Ben Lee Park:

\$1,000 per year

Waterfront Park:

\$1,600 per year

Queensway Street:

\$3,840

Queensway Street is a new concession for 2013.

These Contracts represents the Corporate Focus of Pioneering Leadership in that we find better ways to deliver services to our community.

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

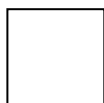
Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of these contracts.

Submitted by:

Ron Forbes, Manager
Property Management

Approved for inclusion:



D. Edstrom, Acting Director,
Real Estate & Building Services

cc: Director, Financial Services

SCHEDULE 'A'

Site A - City Park



SITE B - Ben Lee Park

SS



Concession
Location

SITE C - Waterfront Park (Tugboat Bay)



SITE D - Queensway Bike Concession



**Concession Agreement
City Park Mobile Food Concession (Site A)**

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

VIETNAM VILLAGE
3086 Quail Run Drive
Kelowna, British Columbia V1Z 1Z9

(the “Contractor”)

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Concession services (the “Services”) at City Park at Cold Sands Beach, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - Vietnam Village

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

“**Agreement**” means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

“Seasonal Term” as used herein shall mean the period from May 27th to September 15th, 2013, May 15th to September 15th for 2014, and May 15th to September 15th for 2015 in the Term.

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of

Contractor, to the City in connection with this Agreement is materially correct and accurate;

- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;

- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Mobile Food Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Mobile Food Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Mobile Food Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Mobile Food Vending Concession Bid Package submitted by Vietnam Village dated April

19th, 2013 and attached as Schedule “E” and cooperate fully with the various departments and act in good faith towards the City;

- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the “Seasonal Term”.

5.2 Initial Term

The term of the “Agreement” shall be for the period from July 1st to September 15th in 2013, May 15th to September 15th, in 2014 and May 15th to September 15th in 2015, and will expire no later than September 15th, 2015, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1) year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (May 15th, 2016), the City may exercise an option to renew for an additional season in 2017, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice (“Notice of Complaint”) to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this

Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, “Event of Default” shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor’s performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement (“Dispute”) using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
- The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.

- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations

hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

- 14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

- 29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

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

31.0 Service of Notices

- 31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, British Columbia V1Y 1J4
Telephone: 250-469-8669 Fax No.: 250-862-3349
E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Trinh Nghiem, Vietnam Village
3086 Quail Run Drive
Kelowna, British Columbia V1Z 1Z9
Telephone 250-864-3836
Email: vietnamvillagekelowna@yahoo.com

31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this 21st day of May 2013

VIETNAM VILLAGE

by its authorized signatories



CITY OF KELOWNA

by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.

3. **The City Named As Additional Insured**

The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. **Contractor's Subcontractors**

The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.

5. **Certificates of Insurance**

The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

6. **Other Insurance**

After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.

7. **Additional Insurance**

The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.

8. **Insurance Companies**

All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

 Print Name

 Title

 Company (Insurer or Broker)

 Signature of Authorized Signatory

 Date

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession building during the period of May 15th to September 15th of each year, with the exception that the first year will begin July 1st, 2013. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for a three (3) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City.

1. The City will provide the concession pad serviced with power only.
2. The vehicle must be fully self-contained and not exceed 24 feet in length.
3. The Contractor is to supply the mobile food concession service for a three (3) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City:
 - a) the extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension; and
 - b) such extension will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2013.
4. The City intends to place two (2) additional food trucks on serviced concession pads in the same vicinity in 2014. The Contractor must acknowledge this and submit as part of their bid submission.
5. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year, with the exception of the first year which will begin July 1st, 2013.
6. The Contractor will remove the vehicle / trailer from the site each day. The City will not provide additional parking for the Contractor's vehicle if the Contractor tows a concession trailer. Beginning in 2014, the Contractor will coordinate with the other concession operators for a smooth daily transition in and out of the concession area. No Contractor may block access or egress to and from the concession site.
7. The core operating period is from the last weekend of June through Labour Day weekend where a minimum daily operation must be from 10:00 am through 8:00 pm, weather permitting. The minimum hours of operation outside the core operating period (from the first weekend in May up to the last weekend in June, and the first weekend after Labour Day through the last weekend of September) will be at the Contractor's discretion, but no less than 12:00 noon to 4:00 pm, 7 days per week, weather permitting.

8. The Contractor will pay for all permits, taxes and licences.
9. The Contractor shall comply with all regulations regarding fire, traffic, safety and sanitation and shall acquire all necessary permits.
10. The Contractor will provide a menu of items that will be offered for sale at their concession. Proponents must provide healthy food choices as part of their menu, as outlined in Schedule C.
11. Rent shall be received in monthly instalments due and payable in advance of the 15th day of each month of the said season.
12. The Contractor will clean and maintain the premises to the satisfaction of the City, including clean up of litter within a 30 meter radius of the concession buildings. All paper products used shall be clearly identifiable with the Contractor's operation. The Contractor shall be totally responsible for the removal and disposal of the garbage from the identified containers and supply and insert plastic liner bags in these containers at the end of each business day or more frequently as business dictates.
13. The use of individual packaged condiments is prohibited.
14. No outside advertising will be permitted without the prior consent of the City.
15. The Contractor will be responsible to communicate with the City of Kelowna Outdoor Events Committee and review the Outdoor Events Calendar to determine the dates the park will be closed for special events, and as a result will also be closed for the concession operation, unless agreement can be reached with the event organizer.
16. The Contractor may not sublet or assign the lease to another party.
17. The Contractor shall provide complete annual financial reports to the City, within 45 days of the end of the season (Sept. 15th).
18. The Contractor shall remove the vehicle from the site each day prior to park closure. The Contractor shall move the vehicle when requested by City staff for any reason.
19. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
20. The Contractor is required to supply a bid deposit in the form of a certified cheque made payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance Deposit" and the City will place it into an interest bearing account with the interest accruing to the depositor.

21. All electrical equipment utilized in the Province of British Columbia must bear a recognized electrical certification prior to use. Application for approval may be made to the BC Safety Authority.
22. The City reserves the right to enter into an exclusive sponsorship agreement and the Contractor will honour the terms of any such agreement.

Appendix B-1

Healthy Food Choices - Check mark system

Choose Most ✓✓	Choose Sometimes ✓	Choose Least	Not Recommended
These items, including whole grain breads and fresh vegetables, tend to be the highest in nutrients, the lowest in unhealthy components, and the least processed.	These items include such things as fruit canned in light syrup, represent choices that are moderately salted, sweetened or processed.	These items including such things as fries tend to be low in key nutrients such as iron and calcium and highly salted, sweetened or processed.	These items, including candies and drinks where sugar is the first ingredient, or the second ingredient after water, tend to be highly processed, or have very high amounts of sweeteners, salt, fat, trans fat or calories relative to their nutritional value.

City of Kelowna staff will work closely with current concessionaires to achieve the following product proportions for packaged products as minimum standards. Percentages are based on BC School Guidelines for Healthy Food and Beverages and the Vancouver Coastal Health Policy.

- Within the category of beverages, at least 50% of product choices will be from the Choose Most and Choose Sometimes categories. And up to 50% of product choices may be from the Choose Least or Not Recommended categories.
- Within the category of foods, at least 70% of product choices will be from the Choose Most and Choose Sometimes categories, with no more than 35% of product coming from the Choose Sometimes category. And up to 30% of product choices may be from the Choose Least or Not Recommended categories, with no more than 15% from the Not Recommended category.

APPENDIX C - FEE SCHEDULE

2013

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$3,000 for July 1st to September 15, 2013 plus Tax. Payment will be on or before as follows:

			Total Minimum Instalment
July 15, 2013	\$1,000	+ 5% (GST) \$50	= \$1,050
August 15, 2013	\$1,000	+ 5% (GST) \$50	= \$1,050
September 15, 2013	\$1,000	+ 5% (GST) \$50	= \$1,050

2014

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$4,000 for May 15th to September 15, 2014 plus Tax. Payment will be on or before as follows:

			Total Minimum Instalment
June 15, 2014	\$1,000	+ 5% (GST) \$50	= \$1,050
July 15, 2014	\$1,000	+ 5% (GST) \$50	= \$1,050
August 15, 2014	\$1,000	+ 5% (GST) \$50	= \$1,050
September 15, 2014	\$1,000	+ 5% (GST) \$50	= \$1,050

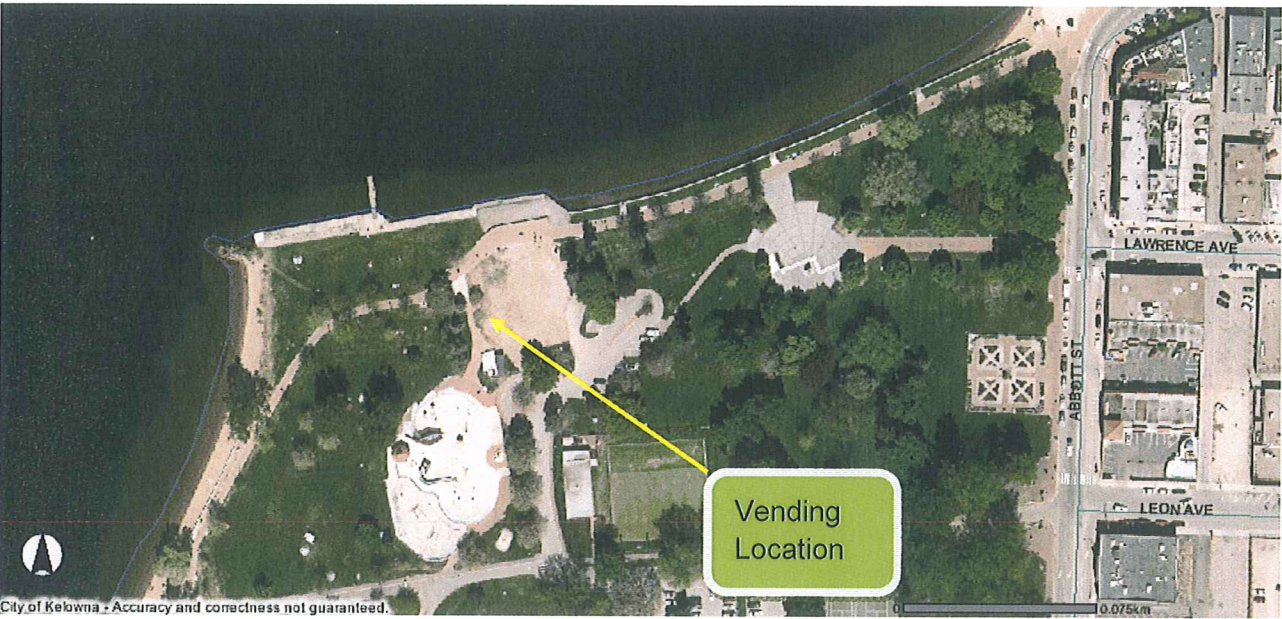
2015

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$4,000 for May 15th to September 15, 2015 plus Tax. Payment will be on or before as follows:

			Total Minimum Instalment
June 15, 2015	\$1,000	+ 5% (GST) \$50	= \$1,050
July 15, 2015	\$1,000	+ 5% (GST) \$50	= \$1,050
August 15, 2015	\$1,000	+ 5% (GST) \$50	= \$1,050
September 15, 2015	\$1,000	+ 5% (GST) \$50	= \$1,050

Applicable taxes subject to change

APPENDIX D - PREMISE



Appendix E - Concession Bid from Vietnam Village

VIETNAM VILLAGE

MOBILE FOOD CONCESSION

3086 Quail Run Drive, Kelowna BC V1V-1Z9

Telephone: 250.864.3836

Email: vietnamvillagekelowan@yahoo.com

April 19, 2013

1. Location and Bid Propose

- Cold Sand Beach (city park) location
- \$3000.00-1st year, \$4000-2nd & 3rd year

2. Background and Experience

- Cater to many major events for the last 5 years in Okanagan like: KOMASKET MUSIC FESTIVAL, RAREARTH JAZZ AND BLUE, VERNON FARMER MARKET, PENTICTON PEACHFEST
- 2013: CANADA DAY Kelowna city park, PENTICTON PEACHFEST, SHAMBHALA (still pending as sited in Salmo, too far away)
- Well known 'mother' restaurant: Vietnam Village has operate for 17 years in Kelowna located on 1961 Harvey Avenue

3. Fresh, Healthy, Local Produces and Ethnicity

We cater each dish freshly cook to customer. We strive to serve our customer a healthy choice and used mostly local grown fruits and vegetables even in the most ethnic dishes.

4. Menu

- Fresh Salad Rolls served with Peanut Dipping Sauce
- Coconut Curry Chicken or Tofu and vegetable with Rice
- Vietnamese Sub (aka: Banh Mi)
- Vietnamese Noodle Soup (aka: Pho)
- Fresh fruit smoothies and Bubble Tea

5. Cultural and Ethnicity in Culinary

We like to bring attention to the locals and visitors alike that Kelowna not just come with the beauty of landscaping, well known of winery, golf and also a wide variety of culture and ethnic in the culinary. This will benefit the city and us alike to attract more locals and tourist to utility our city park.

6. Acknowledgement of the additional of two concession operator in 2014

As mentioned above, we hope to attract more locals and tourists therefore more concessions would provide a difference tasting. Just like Vancouver that has been known of the most amazing Street Foods and has been broadcasting to the world.

7. Brand New Kitchen and Experience Cook

We built a brand new kitchen with full equipment's and cleaning facilities in a 7' x 16' trailer. It has been inspected and approval by the regional health that has a permit to operate anywhere in British Columbia. In addition to that, we bring along a 25 year experiences Vietnamese cook. We will and already have most permit, license and certificate to operate and provide a safe, healthy environment kitchen.

8. An Icon in Kelowna Street Food

With the knowledge, experience and commitment in Vietnam Village restaurant for 17 years we aim to become one of the well know and successful street food in Kelowna. We are not limit to learn or take any good recommends and suggestions to become an icon in Kelowna street food.

Menus

- Fresh Salad Rolls served with Peanut Dipping Sauce \$6 (2 Rolls)
Rice paper wrapped with vermicelli noodles, bean sprout, lettuce, (shrimp OR chicken OR vegetable) with peanut dipping sauce
- Deep Fried Wontons \$6
Wonton wrapper with pork, or chicken with chilli plum sauce
- Fried Chicken Wings with Satay Sauce \$5 (3 whole wings)
- Coconut Curry Chicken or Tofu and vegetable with Rice \$10
Chicken breast or tofu and local vegetables with coconut curry paste (homemade) served on jasmine rice
- Grilled Lemon Grass Pork on Rice \$10
Pork Lion marinated in lemon grass sauce (homemade) served on jasmine rice
- Stir Fried Noodle with Chicken or Shrimp and Vegetable \$10
Chicken breast OR shrimp and local vegetables, egg noodles and garlic and oyster sauce
- Vietnamese Sub (aka: Banh Mi) \$6
Baggett bread, (meat: chicken OR beef OR pork OR tofu), pickled carrot, cilantro and cucumber
- Vietnamese Noodle Soup (aka: Pho) \$9
Rice noodles, Beef OR Chicken in homemade broth
- Fresh fruit smoothies and Bubble Tea \$5
Smoothies: Fresh fruit with syrup, water and ice
Bubble Tea: Fresh fruit or powder (matcha green tea, Mocha, Almond, and mores...) with water, ice and tapioca
- Dessert-Sweet Rice and Bean pudding with Coconut Milk \$3
Sticky Rice, chick pea OR other beans or taro roots, in coconut milk syrup

**Concession Agreement
City Park Food Concession (Site B)**

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

UNA MAK
1800 Gallagher Road
Kelowna, British Columbia V1P 1G7

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Concession services (the "Services") at Ben Lee Park, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - Una Mak

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

"Agreement" means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

“Seasonal Term” as used herein shall mean the period from May 27th to September 15th, 2013, May 15th to September 15th for 2014, and May 15th to September 15th for 2015 in the Term.

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of

Contractor, to the City in connection with this Agreement is materially correct and accurate;

- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;

- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Food Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Food Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Food Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Food Vending Concession Bid Package submitted by Una Mak dated April 13th, 2013 and

attached as Schedule “E” and cooperate fully with the various departments and act in good faith towards the City;

- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the “Seasonal Term”.

5.2 Initial Term

The term of the “Agreement” shall be for the period from May 27th to September 15th in 2013, May 15th to September 15th, in 2014 and May 15th to September 15th in 2015, and will expire no later than September 15th, 2015, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1) year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (**May 15th, 2016**), the City may exercise an option to renew for an additional season in 2017, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice (“Notice of Complaint”) to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this

Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, “Event of Default” shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor’s performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement (“**Dispute**”) using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:
- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
 - The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.
- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations

hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

- 14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

- 29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

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

31.0 Service of Notices

- 31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, British Columbia V1Y 1J4
Telephone: 250-469-8669 Fax No.: 250-862-3349
E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Una Mak
1800 Gallagher Road
Kelowna, British Columbia V1P 1G7
Telephone 250-878-3588
Email: unamak@hotmail.com


31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this ____ day of May 2013

UNA MAK

by its authorized signatories



CITY OF KELOWNA

by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.

3. **The City Named As Additional Insured**

The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. **Contractor's Subcontractors**

The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.

5. **Certificates of Insurance**

The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.

6. **Other Insurance**

After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.

7. **Additional Insurance**

The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.

8. **Insurance Companies**

All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

9. **Failure to Provide**

If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

 Print Name

 Title

 Company (Insurer or Broker)

 Signature of Authorized Signatory

 Date

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession building during the period of May 15th to September 15th of each year with the exception of the first year beginning May 27th, 2013. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for a three (3) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City.

1. The City will provide the concession equipped and in the condition as it presently exists.
2. The Contractor shall acquire all necessary permits and shall comply with all Federal, Provincial and Municipal regulations including but not limited to fire, sanitation and traffic. The lessee shall be responsible for servicing of fire extinguishers.
3. The Contractor will pay for all permits, taxes, utilities and licences.
4. The Contractor is to supply this service for a three (3) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City:
 - a) the extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension;
 - b) such extension will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2013.
5. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year beginning May 27th, 2013.
6. The core operating period is from the last weekend of June through Labour Day weekend where a minimum daily operation must be from 10:00 am through 8:00 pm, weather permitting. The minimum hours of operation outside the core operating period (from the first weekend in May up to the last weekend in June, and the first weekend after Labour Day through the last weekend of September) will be at the Contractor's discretion, but no less than 12:00 noon to 4:00 pm, 7 days per week, weather permitting. All regular hours of operation must be posted.
7. Proponents must provide healthy food choices as part of their menu, as outlined in Schedule C.

8. Rent shall be received in monthly instalments due and payable in advance of the 15th day of each month of the said season.
9. The Contractor will clean and maintain the premises to the satisfaction of the City, including clean up of litter within a 30 meter radius of the concession buildings. All paper products used shall be clearly identifiable with the Contractor's operation. The Contractor shall be totally responsible for the removal and disposal of the garbage from the identified containers and supply and insert plastic liner bags in these containers at the end of each business day or more frequently as business dictates.
10. No outside advertising will be permitted without the prior consent of the City.
11. The Contractor must seek to minimize any conflict with adjacent property owners and with any other users of the park.
12. The Contractor may not sublet or assign the lease to another party.
13. The Contractor shall provide complete annual financial reports to the City, within 45 days of the end of the season (Sept. 15th).
14. All leasehold improvements, changes to the structure, equipment or décor, installation costs and arrangements will be the responsibility of the lessee and will require prior written approval by the City.
15. The lessee shall be responsible for servicing of all equipment, including fire extinguishers and shall provide evidence of such service before commencing seasonal operation.
16. The Contractor will be responsible for all damages other than normal wear and tear, and must repair and maintain all equipment during the term of the contract.
17. The Contractor is required to supply a bid deposit per location in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a "performance deposit".
18. The City reserves the right to enter into an exclusive sponsorship agreement and the Contractor will honour the terms of any such agreement.

Appendix B-1

Healthy Food Choices - Check mark system

Choose Most ✓✓	Choose Sometimes ✓	Choose Least	Not Recommended
These items, including whole grain breads and fresh vegetables, tend to be the highest in nutrients, the lowest in unhealthy components, and the least processed.	These items include such things as fruit canned in light syrup, represent choices that are moderately salted, sweetened or processed.	These items including such things as fries tend to be low in key nutrients such as iron and calcium and highly salted, sweetened or processed.	These items, including candies and drinks where sugar is the first ingredient, or the second ingredient after water, tend to be highly processed, or have very high amounts of sweeteners, salt, fat, trans fat or calories relative to their nutritional value.

City of Kelowna staff will work closely with current concessionaires to achieve the following product proportions for packaged products as minimum standards. Percentages are based on BC School Guidelines for Healthy Food and Beverages and the Vancouver Coastal Health Policy.

- Within the category of beverages, at least 50% of product choices will be from the Choose Most and Choose Sometimes categories. And up to 50% of product choices may be from the Choose Least or Not Recommended categories.
- Within the category of foods, at least 70% of product choices will be from the Choose Most and Choose Sometimes categories, with no more than 35% of product coming from the Choose Sometimes category. And up to 30% of product choices may be from the Choose Least or Not Recommended categories, with no more than 15% from the Not Recommended category.

APPENDIX C - FEE SCHEDULE

2013

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1000** for **May 27th to September 15, 2013 plus Tax**. Payment will be on or before as follows:

Total Minimum Instalment			
June 15, 2013	\$250	+ 5% (GST) 12.50	= \$262.50
July 15, 2013	\$250	+ 5% (GST) 12.50	= \$262.50
August 15, 2013	\$250	+ 5% (GST) 12.50	= \$262.50
September 15, 2013	\$250	+ 5% (GST) 12.50	= \$262.50

2014

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1000** for **May 15th to September 15, 2014 plus Tax**. Payment will be on or before as follows:

Total Minimum Instalment			
June 15, 2014	\$250	+ 5% (GST) 12.50	= \$262.50
July 15, 2014	\$250	+ 5% (GST) 12.50	= \$262.50
August 15, 2014	\$250	+ 5% (GST) 12.50	= \$262.50
September 15, 2014	\$250	+ 5% (GST) 12.50	= \$262.50

2015

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1000** for **May 15th to September 15, 2015 plus Tax**. Payment will be on or before as follows:

Total Minimum Instalment			
June 15, 2015	\$250	+ 5% (GST) 12.50	= \$262.50
July 15, 2015	\$250	+ 5% (GST) 12.50	= \$262.50
August 15, 2015	\$250	+ 5% (GST) 12.50	= \$262.50
September 15, 2015	\$250	+ 5% (GST) 12.50	= \$262.50

Applicable taxes subject to change

APPENDIX D - PREMISE



+

Proposal
Lease Operation of Concession
At
Ben Lee Park

Una Mak


1800 Gallagher Road
Kelowna, B.C.
V1P 1G7

250.878.3588
unamak@hotmail.com

Introduction:

I've been operating the Ben Lee Park Concession since 1998 and together with the Apple Bowl Concession for the last 5 years & also the Skate Rental Shop in Rutland Arena in the winter time since 1997.

I've had great experiences in dealing with the public and am willing to co-operate with the city to facilitate the Healthy Foods Program and anything that may need be.


Una Mak

Summary:

Concessionaire needs to know which park operation would make a big profit for him/her. Ben Lee Park is not one of them. I too was a dreamer but I've come to the realization that I would be more satisfied when my customers would come back again and again, plus parents trust me enough to send their 5 – 6 years old over to buy by themselves which is more rewarding.

It's sad to say but with no special events, Ben Lee Park is only a very nice neighborhood park where the same local people come daily and with limited spending.

Due to the fact that this concession requires long hours, no grill set up and revenues are limited, I could only offer the same \$1,000.00 for the season.

I hope I am the right person that the City is looking for to provide the service but if not I understand. If this is the case, please allow a week for me to remove my equipment.

Thank You for your consideration and time.

Proposed Menu

Drinks	Price	Food	Price
Coffee/Tea	\$1.50	100% Beef Hotdogs (Whole Wheat buns)	\$2.00
Hot Chocolate	\$2.00	Smokie(WW buns)	\$3.50
Pepsi Products	\$2.50	Baked French Fries Gravy	\$3.50 .75
Water	\$2.00	Nachos and Cheese/Salsa	\$3.50
Gatorade	\$2.50	Pizza Pops	\$1.50
Bottle Juice	\$2.50	Toss Salad	\$2.50
Milk To Go	\$2.00	Chicken or Ham Salad	\$4.50
		Fruit Salad	\$4.00
		Fresh Fruit	\$1.00
		Chicken Wrap	\$5.00
		Grilled Cheese	\$3.00
		Grilled Cheese w/Ham	\$4.00
Snacks			
Veggie Dip	\$3.00		
Nut Free Granola Bars...	.50		
Oatmeal-To-Go Bars....	\$1.00		
100% Fruit Bars.....	\$2.00		
Beef Jerky	\$2.00	Ice Cream	
Yogurt	\$1.50	Will carry healthier	
Cotton Candy	\$3.00	products, like real fruit bars and	
Chocolate Bars	\$1.25	yogurt bars.....	
Gummy Candy Bag	\$1.00		
Freezies	.75		
Sno Kones	\$2.00		
Fruit Cup	\$1.25		

**Concession Agreement
Waterfront Park Activity Concession (Site C)**

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

096796 B.C. LTD. dba WATERFRONT PARK BEACH RENTALS
1135 Neptune Road
Kelowna, British Columbia V1X 3E4

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Activity Concession services (the "Services") at Waterfront Park, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - SUP SAND SUN

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

"Agreement" means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

“Seasonal Term” as used herein shall mean a four-month period from May 15th to September 15th, 2013, May 15th to September 15th for 2014, and May 15th to September 15th for 2015 in the Term.

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;

- (b) "Determination" shall mean the written documentation of a decision of the City's Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;
- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word "including", when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of

Contractor, to the City in connection with this Agreement is materially correct and accurate;

- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;

- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;
- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Activity Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Activity Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Activity Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Activity Concession Bid Package submitted by SUP SAND SUN dated April 15th, 2013 and

attached as Schedule "E" and cooperate fully with the various departments and act in good faith towards the City;

- (f) maintain clear communication lines with staff in order to offer the best customer service;
- (g) comply with all laws; and
- (h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the "Seasonal Term".

5.2 Initial Term

The term of the "Agreement" shall be for a period running from May 27th to September 15th in 2013, May 15th to September 15th, in 2014 and May 15th to September 15th in 2015, and will expire no later than September 15th, 2015, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of two (2), one (1) year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (May 15th, 2016), the City may exercise an option to renew for an additional season in 2017, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

- (a) at the expiration of the initial term, unless extended by mutual agreement; or
- (b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this

Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, “Event of Default” shall mean any one or more of the following:
 - (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor’s performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement (“Dispute”) using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.
- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.
- 9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:
- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
 - The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.
- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations

hereunder and each party's representative may be relied upon by the other party as the official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

- 14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

- 22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.
- 22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.
- 22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

- 23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.
- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.
- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

- 29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

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

31.0 Service of Notices

- 31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, British Columbia V1Y 1J4
Telephone: 250-469-8669 Fax No.: 250-862-3349
E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Barbie Gervais, SUP SAND SUN
1135 Neptune Road
Kelowna, British Columbia V1X 3E4
Telephone 250-808-6247
Email: supsandandsun@gmail.com

31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this ____ day of May 2013

096796 B.C. LTD.
dba WATERFRONT PARK BEACH RENTALS

by its authorized signatories



CITY OF KELOWNA
by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.
3. **The City Named As Additional Insured**
The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
4. **Contractor's Subcontractors**
The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. **Certificates of Insurance**
The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.
6. **Other Insurance**
After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. **Additional Insurance**
The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.
8. **Insurance Companies**
All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. **Failure to Provide**
If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation
 City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____

Title _____

Company (Insurer or Broker) _____

Signature of Authorized Signatory _____

Date _____

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession area during the period of May 15th to September 15th of each year beginning May 15th, 2013, with the exception of the first year which will begin May 27th, 2013. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for a three (3) year period with the option of extending for two (2) additional one (1) year terms at the sole discretion of the City.

1. The Contractor will provide for use by the public: rentals, sales and/or lessons of watercraft propelled through the water by human power and can include but is not limited to stand-up paddleboards, canoes, kayaks, leg powered paddle boats, etc.
2. The Contractor shall maintain all equipment to such standards as will ensure safety for operators.
3. The Contractor shall ensure that no persons too young to operate the proposed activity are permitted to use them, and shall ensure that no persons operating the proposed activity do so in an unsafe manner or endanger persons swimming at any designated beach.
4. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year beginning May 15th, with the exception of the first year which will begin May 27th.
5. The park is open from 6 am to 11 pm each day and the Contractor will provide service between 10 am and 8 pm, 7 days per week, weather permitting. The contractor may start earlier or stay open later depending on demand.
6. The Contractor is to supply this service for a one (3) year period with the option of extending for an additional two (2) one (1) year terms at the sole discretion of the City:
 - a. The extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension; and
 - b. Such option period will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2013.
7. The Contractor will pay permits, taxes and licenses.
8. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the concession).

9. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.
10. No outside advertising will be permitted without the consent of the City.
11. The City leases a food concession in the same park. No food will be allowed to be provided.
12. Solicitation of the public is not allowed.
13. The Contractor will be responsible to communicate with the City of Kelowna Outdoor Events Committee and review the Outdoor Events Calendar to determine the dates the area will be closed for special events, and as a result will also be closed for the concession operation, unless agreement can be reached with the event organizer.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City. If approved by the City the minimum amount for such assignment shall be \$500.00 payable by the Contractor to the City.
15. The Contractor is required to supply a bid deposit in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a “performance deposit”.
16. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
17. There will be no structure provided. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and any design must be approved by the City’s Infrastructure Planning department.
18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in the proposal.
20. The City will not provide on-site parking for the Contractor’s vehicle and towing equipment.
21. Retail is limited to water, sunscreen/lip balm, sunglasses, beach towels, watershoes and hats.

APPENDIX C - FEE SCHEDULE

2013

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1600** for **May 15th to September 15, 2013 plus Tax**. Payment will be on or before as follows:

				Total Minimum Instalment
June 15, 2013	\$400	+ 5% (GST)	\$20	= \$420
July 15, 2013	\$400	+ 5% (GST)	\$20	= \$420
August 15, 2013	\$400	+ 5% (GST)	\$20	= \$420
September 15, 2013	\$400	+ 5% (GST)	\$20	= \$420

2014

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1600** for **May 15th to September 15, 2014 plus Tax**. Payment will be on or before as follows:

				Total Minimum Instalment
June 15, 2014	\$400	+ 5% (GST)	\$20	= \$420
July 15, 2014	\$400	+ 5% (GST)	\$20	= \$420
August 15, 2014	\$400	+ 5% (GST)	\$20	= \$420
September 15, 2014	\$400	+ 5% (GST)	\$20	= \$420

2015

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of **\$1600** for **May 15th to September 15, 2015 plus Tax**. Payment will be on or before as follows:

				Total Minimum Instalment
June 15, 2015	\$400	+ 5% (GST)	\$20	= \$420
July 15, 2015	\$400	+ 5% (GST)	\$20	= \$420
August 15, 2015	\$400	+ 5% (GST)	\$20	= \$420
September 15, 2015	\$400	+ 5% (GST)	\$20	= \$420

Applicable taxes subject to change

APPENDIX D - PREMISE



Appendix E - Concession Bid from SUP SAND SUN

CITY OF KELOWNA
Waterfront Park (Tugboat Bay)
Activity Concession 2013

Please accept this as our submission on behalf of David Gervais President and Barbara Gervais Vice President of SUP SAND and SUN, as an application to obtain the lease for the Waterfront Park (Tugboat Bay) Activity Concession.

We are established professional entrepreneurs in the downtown and Kelowna business sectors. Approaching 25 years of success and growth in our existing businesses on the Kelowna Waterfront, we have made it our mandate and mission to deliver positive results in the tourism industry.

Together President and Vice President bring over 40 years combine experience in the Waterfront Tourism Industry. Our interest in the promotion and growth of Kelowna Tourism as an interactive and destination city is part of our professional and personal mandate. Our combination of experience, business skills and commitment to our community cannot be surpassed.

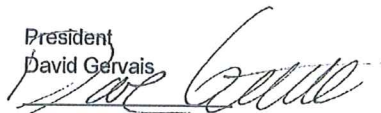
- Long standing business leaders in the Kelowna area for many years
- Strong commitment to the success of the Kelowna as a tourist destination
- We have a strong global presence on Google, Linked In, Twitter, Facebook and Blog

We believe that with our experience, commitment, professionalism and business skills, this would be a great partnership with the City of Kelowna.

SUP SAND and SUN is offering a lease payment of \$1600.00 for the 4 months May 15, 2013 through September 4th 2013 per year for the length of the lease terms.

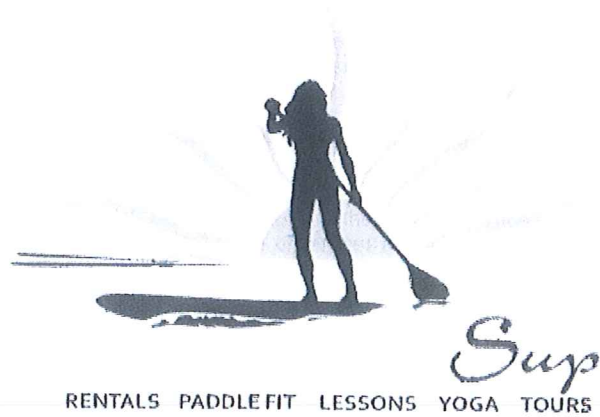
With sincere thanks for your time and consideration,

President
David Gervais



Vice President
Barbara Gervais





Waterfront (Tugboat Bay)
Activity Concession Bid 2013

Applicant: SUP SAND SUN

President - David Gervais
250 801 3283

Vice President - Barbara Gervais
250 808 6247

SUP SAND SUN
Waterfront (Tugboat Bay)
Activity Concession Bid 2013

General Requirements

SUP SAND SUN will operate an activity concession from May 15th, 2013 until September 4th 2013 for the term of 3 years located at Waterfront Park (Tugboat Bay)

SUP SAND SUN has intention to bid on the City Park Location if and when it comes available.

David Gervais and Barbara Gervais are bidding on the Queensway Bicycle Rental Activity Concession.

As Contractor SUP SAND SUN agrees to all of the below and listed points 1 through 19 in the bid package under general scope of services of the contractor.

- ✓ Will provide, equip and operate the activity concession in the designated area as per schedule A.
- Will maintain all equipment to standards ensuring safety for each and every operator.
- Will ensure that no person under the age of the insurance policy and safety operating code will be permitted to operate such listed equipment.
- Will ensure all renters and persons operating the proposed activity in a safe manner with mandatory life vests.
- Will ensure all renters and persons operating the proposed activities will not endanger persons swimming at any designated beach
- Will operate during the period of May 15th to September 4th of each year beginning May 15th 2013
- Will operate from 10am until 8pm, 7 days per week weather permitting with additional morning and evening classes in SUP FIT, SUP YOGA & SUP MEDITATION
- Will supply service for a 3 year period, with option to extend for an additional 2 year at the sole discretion of the city and complying with term 6a and 6b
- Will pay all permits, taxes and licenses required
- Will clean and maintain the area surrounding the concession
- Will comply with all fire, traffic, safety and acquire necessary permits
- * We would like to provide a structure and will meet all required regulations and bylaws.
- * We will have design approved by the City's Infrastructure Planning Department.
- Prior to awarding bid we will prove to the City of Kelowna ownership of the equipment listed in proposal

SUP SAND SUN
Waterfront (Tugboat Bay)
Activity Concession Bid 2013

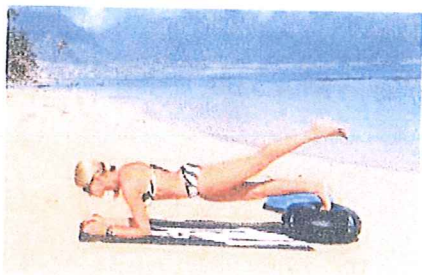
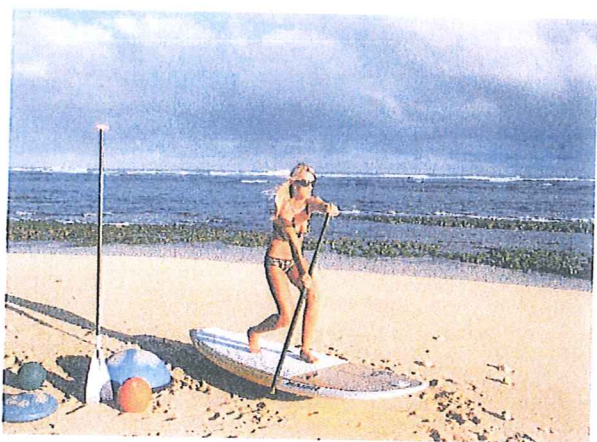
Submission Requirements

Prior to commencing work we will submit proof of City of Kelowna business license, Work Safe BC Coverage, and all appropriate insurance coverage listed in Appendix B.

Attached you will find photographs and or illustrations all equipment offered for rent, tours and lessons, a brochure providing the schedule of proposed rental rates.



We will have a minimum of 6 and a maximum of 9 Surfttech Stand Up Paddle Boards, 12 Surfttech Paddles, the required amount of Personal Floatation Devices (Coast Guard Certified) aswell a leash and safety kit with every board. Surfttech is on of the worlds top manufacturers in the board industry. We will be purchasing through Bodie Shandro, a Canadian distributor for surfttech, whom is also our Paddle Canada Instructor Trainer. We feel working with Bodie Shandro of surfttech in choosing boards designed for both the tourism and fitness is beneficial to having the right equipment to regulate safety, sport and fun.



**PADDLE
CANADA
PAGAIE
CANADA**

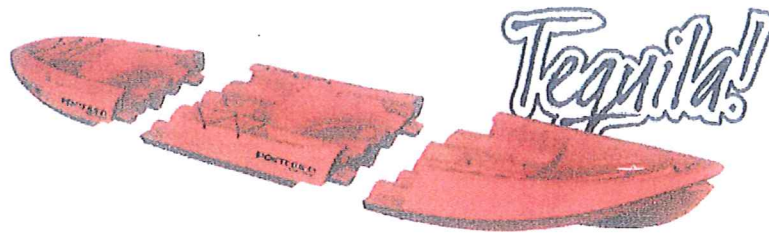
We will be using 6 x Bosu Balls, 2 x Stability Balls, and 6 x Volley Balls and 2 x Kettle Balls for all SUP dry land training. Our Trainers are Paddle Canada certified Instructors. Owner operator Barbie Gervais is a BCRPA and ACE certified Personal Trainer / Yoga Teacher.



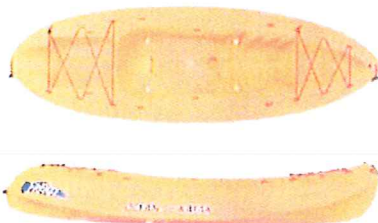
We will operate 2 Sundolphin Peddle Boats. A 5 person family pedal Boat with the option to have a sun shade. All Peddle Boats are Coast Guard Approved.



We will have 2 Hydro Bikes designed for 2 ppl aswell as 2 Hydro Bikes designed for single use. All Hydro Bikes are Coast Guard Approved and ship from our Canadian distributor in Ontario.



We will have 2 Point 65 tequila Kayaks which are designed to accommodate single, double and triple participants.



We will have 4 single sit on top Kayaks accommodating all levels of paddlers.

For safety all kayaks will be sit on top version, include PFD and Safety Kits.

We have attached a SUP brochure outlining the services and fees.
In addition we will rent SUPS / Kayaks in 30 minute intervals keeping the equipment in a supervised area to accommodate the tourists and residents who do not bring credit cards to the beach, however still wish to participate. SUPS and Kayaks will be \$10.00 - \$12.00 for 30 minutes.

Paddle Boats and Water Bikes
30 minutes for \$12.00 - \$15.00

We will offer a punch card to reduce the rental rate for frequent paddlers. See attached.

Structure Option

SUP SAND and SUN propose to work with City of Kelowna's Infrastructure planning Department to build a structure to house Rental Equipment.

We do feel an onsite structure will create a professional aspect of our Rental Operation necessary on the water.

- Safety, Care and Maintenance of equipment
- Equipment can be taken out as per demand of the day/season
- Presence of professionalism to tourist and residents alike
- A commitment to a 3 year lease with option to renew
- A signing area for Rental Agreements and Insurance waivers

We do anticipate an alternative if the City of Kelowna does not confirm to the idea of a structure we will be using a removable trailer in and out daily.

David Gervais / Barbara Gervais Related Experience

Both David Gervais & Barbara Gervais grew up with parents owning a chain of Petro Can Gas stations, Marina and Watersport Rentals and Personal Water Craft Manufacturer in Winnipeg Manitoba. Both has been involved in the marina / charter industry for the last 25 years,

Growing up in the family marina in Grand Brach Manitoba 1991 - 1994

- Pedal boat rentals
- Windsurf Rentals
- Personal Watercraft Rentals
- Marine, Water Sport Apparel and related Accessories. Marine Fuel and Petroleum Product Sales
- Concession Stand with food and beverage
- Retail Sales of Beach Clothing and related accessories

Moving to Kelowna and starting the first Marina at The Grand Hotel, know presently as The Delta Grand 1994 – 2009

- Initial lease negotiation
- Initial set up with building docks
- acquiring Rental Fleet
- Acquiring all necessary safety gear for Rentals
- Rental Fleet consisted of 6 boats, 6 Seadoos, Wake Board/ Water Ski Boat, Pedal Boats, Water Bikes, knacks, and Canoes and Land Rentals Roller Blades and Bikes.
- Acquiring all Coast Guard Certifications
- Responsible for drafting Insurance and Lawyer Approved Liability Waivers, Rental Contracts, Damage Waivers and Orientation Package
- Yearly renewal and upgrade with stats and requirements of Canadian Coast Guard and Transportation Canada
- Human recourses in hiring qualified staff in all areas of a Marina
- Responsible for expansion and growth in both Marina Services & Financial Growth consistent over 14 years

2009 - present

Presently Lakefront Sport Centre located at the Delta Grand Hotel is operated by Wayne and Donna Dudych, (our sister and brother in law). Barbara does over see marketing and is responsible for all Social Media Marketing at Lakefront Sport Centre. Working in close proximity, you will have a tenant with the best interest of both rental businesses' in mind creating a positive relationship. This relationship will have a positive effect on tourism and resident ensuring the services offered here on Lake Okanagan are not only fun, available and safe.

In 2000 We negotiated an expansion to add an office and retail space in the new wing of the hotel. 2000 – 2013

- Concierge Service

- Ambassador for Kelowna and surrounding area for 15 years
- Corporate Bookings / Tours
- Retail Sales of related Water Sport Apparel and Accessories

Barbara Gervais is a Paddle Canada Certified Instructor for both Flat Water and Advanced Water SUP Lessons.

She also holds a Personal Trainer, SUP Yoga Certification and SUP Fitness Certification.

Barbara has been teaching as a Paddle Canada Instructor since April 2011

David Gervais has a business management degree and real estate management experience.

We have a team of 4 Paddle Canada Certified Instructors at the present time.

RENTAL RATES

Prices do not include applicable taxes and insurance.

SUP	\$25/hr		
Kayak, single	\$25/hr	\$35/2 hr	\$45/3hr
Kayak, double	\$35/hr	\$45/2hr	\$55/3hr
Kayak, triple	\$45/hr	\$55/2hr	\$65/3hr

Punch Cards: with discounted rates for frequent paddlers.

SUP LESSONS (All equipment included)

Intro Lesson \$60/2 hrs

Group (3-6), pp \$45/90 min

Adv. Flat Water \$40/hr

Focusing on advanced paddling techniques and proper body position to maximize paddling efficiency and fitness benefits.

PADDLE FITNESS: SUP FIT LAND 45 MIN

Our land based class will focus on strength and conditioning to help you achieve your paddling goals. The classes will focus on dynamic warm up, core strength development, injury prevention, functional strength, endurance training and paddle specific exercise with minimal equipment on the beach.



PADDLE FITNESS: SUP FIT WATER 1 HOUR

Take what you learnt on land too the water focusing on a total body workout with dynamic warm up, core and resistance training on the board adding the endurance element of paddling. This session provides a strong core with a high calorie burning workout.

PADDLE FITNESS: SUP FIT COMPLETE 1.5 HOURS

Join one of our personal trainers and Paddle Canada Fit qualified instructors, on a group paddle tour/SUP workout that gets you out of the gym and into nature! We start with a warm-up and upper body strengthening moves, followed by sprints, three-minute power paddles and exercises to target each muscle group. We'll power paddle back to shore and complete the circuit with yoga stretches.

STAND UP PADDLE BOARD SUP SAND SUN



RENTALS PADDLE FIT LESSONS YOGA TOURS

Get out of the gym and into nature! Join us on the lake this summer. Stand up paddle fitness and fun guaranteed!

250 808 6247

supsandandsun@gmail.com

Kelowna BC

Enjoy the peace and tranquility of the fastest growing water sport in the world! Stand Up Paddling is easy to learn and is a non-intimidating activity that appeals to all ages and physical abilities. Participants are able to quickly progress and develop the skills necessary to improve fitness or simply enjoy the experience of "walking on water"!

STAND UP PADDLE BOARD YOGA

Come enjoy the ancient practice of Yoga combined with Stand Up Paddle Boarding! These classes take your favorite yoga routines and put them on the water! Yoga practice brings balance and restores all bodily systems by creating physical, mental and spiritual harmony. Both yoga and stand up paddle boarding are great for building better balance, coordination, endurance, and body strength!

GENTLE WAVE ©

Move at a gentle pace as you balance the mind & body through meditation, breathing techniques, and asanas (physical postures) in this Hatha style class. Postures are often held longer to slowly release tension, free the joints, cleanse the body, and enable the mind to quiet. The class culminates to blissful relaxation on your board, leaving you feeling happy and free!

NAUTICAL FLOW ©

Develop better balance, coordination, and body strength by linking Ujjayi breathing to asanas (physical postures) through a series of sun salutations in this energizing Vinyasa class. The connection with movement and breath will ease the mind and allow you to experience a sense of peace and tranquility. The class culminates to blissful relaxation on your board, leaving you feeling happy and free!



SURFER'S SCULPT ©

Build a stronger core, improve your cardio, and increase endurance through the amazing sport of stand up paddle boarding combined with beach fitness and power yoga. This class is guaranteed to tone and sculpt every muscle with paddle sprints, beach running, and core exercises to get you a killer surfer's body!

SUP MEDITATION STAND UP PADDLE

The best way to meditate is while you are on the water, that's why we combined the practice of meditation with stand up paddling.

Water in and of itself brings a meditative feeling. This class combines the synergy of the water, the rhythm of nature, and the power of meditation for a rejuvenating yet relaxing mind, body and spirit experience.

This class will assist you to find focus quicker, still your mind faster and feel your body playing all while enjoying the water. You may even get to see some of our enlightened friends, the birds and the fish.

YOGA ENERGY'S OSPREY

In this class you will learn and use mantras, practice breathwork and learn to paddle all at the same time, while experiencing what we like to call the "ananda factor" on the water.

PRIVATE GROUPS OR PRIVATE LESSONS

Stand up Paddle Boarding can make your birthday party, corporate team building, sports team cross training, or family vacation a lot more fun, active, and healthy! Whether you want a beginner lesson or one of our three signature SUP Yoga classes, we can customize your package to fit your needs!

SUP YOGA prepaid PUNCH CARD
EXPIRES: SEPTEMBER 9TH, 2013




EACH PUNCH EQUATES TO A SUP YOGA CLASS WITH A PADDLE. CANADA CERTIFIED INSTRUCTOR. INCLUDING BOARD RENTAL. RESERVATIONS, DEPOSIT AND WAIVER REQUIRED.

SUP SAND SUN
1135 NEPTUNE RD
KELOWNA, BC
V1X 3E4
250 808 6247
supsandandsun@gmail.com
OPEN 7 DAYS A WEEK
9AM - DUSK

NAME: _____


PHONE: _____

EMAIL: _____



SUP SAND SUN

SUPS & KAYAKS RENTAL prepaid PUNCH CARD
EXPIRES: SEPTEMBER 9TH, 2013




EACH PUNCH EQUATES TO A 30 MIN. SESSION. RESERVATIONS, DEPOSIT AND WAIVER REQUIRED.

SUP SAND SUN
1135 NEPTUNE RD
KELOWNA, BC
V1X 3E4
250 808 6247
supsandandsun@gmail.com
OPEN 7 DAYS A WEEK
9AM - DUSK

NAME: _____

PHONE: _____

EMAIL: _____



SUP SAND SUN

**Concession Agreement
Queensway Street Activity Concession (Site D)**

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia V1Y 1J4

OF THE FIRST PART

AND:

TELEMARK SPORTS INC. dba FRESH AIR
18-2070 Harvey Avenue
Kelowna, British Columbia V1Y 8P8

(the "Contractor")

OF THE SECOND PART

WHEREAS the City desires to appoint the services of the Contractor to provide Concession services (the "Services") at Queensway Street, Kelowna, BC.

NOW THEREFORE this Agreement witnesses that the parties hereby covenant and agree with each other as follows:

Services

The Contractor shall provide services on the terms and conditions set out in this Agreement and are binding upon the parties.

Appendices

The following attached Appendices are a part of this Agreement:

- Appendix A - Insurance Requirements
- Appendix B - Scope of Services
- Appendix C - Fees - Schedule
- Appendix D - Premise
- Appendix E - Bid Package - Fresh Air Experience

If there is any inconsistency or conflict between the provisions of the Agreement and the Appendices, the Agreement shall govern and take precedence over all other Contract Documents.

AGREEMENT TERMS AND CONDITIONS

1.0 Definitions (For purposes of this Agreement, the following terms shall have the meanings set forth below):

"Agreement" means the executed agreement between the City and the successful Contractor on the terms and conditions set out in this document;

“Agreement Administrator” refers to the individual appointed by the Manager, Property Management to administer this Agreement on behalf of the City, and any participating members and other authorized purchasers;

“City’s Representative” means the Manager, Property Management or his designate;

“Department” means the Real Estate & Building Services department of the City of Kelowna

“Department Representative” means the Manager, Property Management, who shall represent all City Departments for the purposes of this Agreement, or, such other person who may subsequently be appointed in writing by the Department Representative and notified to the Contractor;

“Event of Default” references Article 6.1(c);

“Force Majeure” shall mean failures which occur for reasons beyond the reasonable control of the non-performing party, which include acts of God, acts of any governmental authority, strikes, blacklisting, embargo, and lockouts or other industrial disturbances not related to that Party, acts of the public enemy, wars, blockades, insurrections, explosions, rebellions, revolutions, riots, epidemics, landslides, lightning, earthquakes, storms, subsidence, floods, fires, high waters, washouts, orders or acts of civil or military authorities, or civil disturbances, but it shall not include: any inability to fulfill its financial obligations or financial difficulty or condition, insolvency, or any court protection from creditors or any other occurrence similar to those recited, which is beyond the reasonable control of the non-performing party;

“G.S.T.” means any Goods and Services Tax payable in connection with the goods and services pursuant to the Excise Tax Act of Canada and shall also include any sales, value added or like taxes as well as any capital tax adopted by any lawful authority as may be amended from time to time;

“Term” means the term as specified in Section 5.0;

“Schedule” means a schedule to this agreement;

“Seasonal Term” as used herein shall mean a four-month period from May 27th to September 15th, 2013, in the Term.

2.0 Interpretations

- (a) “Authorized”, “directed”, “required”, “requested”, “approved”, “ordered”, “sanctioned”, and “satisfactory” shall, unless some other meaning is obvious from the context, respectively mean authorized, directed, required, requested, approved, ordered or sanctioned by, or satisfactory to, the City;
- (b) “Determination” shall mean the written documentation of a decision of the City’s Representative including findings of fact to support a decision. A Determination becomes part of the procurement file to which it pertains;

- (c) the Heading and Subheadings inserted in this Agreement are designed for convenience only and do not form a part of this Agreement nor are they intended to interpret, define, or limit the scope, extent, or intent of this Agreement or any provision thereof;
- (d) the word “including”, when following any general statement, term or matter, shall not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter;
- (e) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, as amended and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplement or superseding the same;
- (f) no approval, authorization, sanction or permission required to be provided hereunder shall be unreasonably or arbitrarily withheld or delayed by the party providing same; and
- (g) words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa and words importing individuals shall include firms and corporations, and vice versa.

3.0 Representations of Contractor

3.1 The Contractor covenants, represents and warrants to the City that:

- (a) Contractor is a duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) Contractor has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (c) all necessary proceedings have been taken to authorize Contractor to enter into this Agreement and to execute and deliver this Agreement;
- (d) this Agreement has been properly executed by Contractor and is enforceable against Contractor in accordance with its terms;
- (e) any statement, representation or information, whether oral or written, made furnished or given by Contractor, its directors, officers or anyone acting on behalf of Contractor, to the City in connection with this Agreement is materially correct and accurate;

- (f) Contractor has no knowledge of any fact that materially adversely affects or, so far as it can be foreseen, might materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on, its contracting documents, or any contract or agreement to which it is a party;
- (h) Contractor is neither a party to nor threatened with any litigation and has no knowledge of any claims against it that would materially adversely affect its financial condition or its ability to fulfill its obligations under this Agreement;
- (i) Contractor has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers' Compensation legislation and other similar legislation to which it is subject and has paid all taxes, fees and assessments due by Contractor under those laws as of the reference date of this Agreement;
- (j) Contractor holds all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law to conduct its business;
- (k) Contractor's investigation has been based on its own examination, knowledge, information and judgment and not upon any statement, representation or information made or given by or on behalf of the City;
- (l) Contractor accepts the risks assigned within this Agreement identified as being borne by Contractor;
- (m) Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved sub-contractual agreements in place and available to enable it to fully perform the work;
- (n) Contractor pays punctually as they become due, all accounts, expenses, wages, salaries, taxes, rates, fees and assessments required to be paid by it on any of its undertakings;
- (o) Contractor has investigated and satisfied itself of every condition affecting the work including labour, equipment and material to be provided; but not limited to, the standards, responsibilities, task schedules and subsequent written instructions if any, all as prepared by the City;
- (p) Contractor acknowledges that it has the responsibility for informing itself of all aspects of the work and all information necessary to perform the work;
- (q) Contractor will comply with all the requirements of the Agreement and will perform all work and supply all labour, equipment and materials necessary to do so;

- (r) Contractor is an independent Contractor and not the servant, employee, partner, or agent of the City;
- (s) Contractor will not, in any manner whatsoever, commit or purport to commit the City to the payment of any money to any person;
- (t) no partnership, joint venture, or agency involving the City is created by this Agreement or under this Agreement;
- (u) the City may, from time to time, give such instructions to Contractor as the City considers necessary in connection with provision of the work, which instructions Contractor will comply with, but Contractor will not be subject to the control of City with respect to the manner in which such instructions are carried out;
- (v) all employees and sub-contractors employed by Contractor to provide the work are at all times the employees and sub-contractors of Contractor and not of the City. Contractor is solely responsible for arranging all matters arising out of the relationship of employer and employee, and
- (w) Contractor has independently reviewed all labour relations issues related to the performance of Contractor's obligations under this Agreement.

4.0 General Obligations of Contractor

4.1 Contractor shall:

- (a) offer Activity Concession services, as set out in the Scope of Services attached as Schedule "B";
- (b) perform and contract in its own name and for its sole account for all things necessary or desirable for the proper and efficient provision of Activity Concession services during the term;
- (c) use its best endeavours to provide the services to the City in a timely manner and in accordance with the terms of the Contract;
- (d) ensure that all its employees engaged in this contract are suitably qualified and experienced, and act to the best of their skills and ability and in accordance with accepted Activity Concession standards for persons having those qualifications and experience;
- (e) follow all instructions of the City's Manager, Property Management in respect of the performance by Contractor of its obligations under this contract and as set out in the Activity Concession Bid Package submitted by Fresh Air Experience dated April 15th, 2013 and attached as Schedule "E" and cooperate fully with the various departments and act in good faith towards the City;
- (f) maintain clear communication lines with staff in order to offer the best customer service;

(g) comply with all laws; and

(h) only use the facilities provided by the City for the purposes of this Contract.

5.0 Term

5.1 Collectively, the Initial Term and Renewal Term are referred to as the "Seasonal Term".

5.2 Initial Term

The term of the "Agreement" shall be for a period running from May 27th to September 15th in 2013, and will expire no later than September 15th, 2013, subject to specific termination rights in this document and subject to a first option to extend the Agreement at the sole and exclusive discretion of the Manager, Property Management.

5.3 Renewal Term

The City agrees that prior to entering into discussions with any third party with respect to the supply and/or advertising of a Mobile Concession for the period commencing after the end of the Initial Term, the City may in its sole discretion with respect to each renewal term renew this Agreement for an additional year to a maximum of four (4), one (1) year renewals following the completion of the Initial Term.

No later than ninety (90) days prior to the start of the optional second consecutive term of the Agreement (**May 15th, 2014**), the City may exercise an option to renew for an additional season in 2015, provided the Contractor is in total compliance with all the terms and conditions of the Agreement.

The City of Kelowna shall notify the Contractor of its intentions to exercise the aforementioned option in writing.

6.0 Termination - City

6.1 This Agreement will terminate:

(a) at the expiration of the initial term, unless extended by mutual agreement; or

(b) If at any time there occurs an Event of Default (defined below), the City may give written notice ("Notice of Complaint") to Contractor specifying in reasonable detail the Event of Default. If Contractor shall fail to perform or observe any covenant, condition or agreement to be performed or observed herein and such Event of Default continues un-remedied for a period of seven (7) days after receiving the Notice of Complaint thereof from the City, then the City may, at its option, terminate this Agreement forthwith without prejudice to any other rights it may have in law or equity. If this Agreement is terminated by the City, Contractor shall be entitled to an immediate pro-rata refund of all unearned monies paid in advance to the City, as determined by mutual agreement.

- (c) For the purposes hereof, “Event of Default” shall mean any one or more of the following:
- (i) if Contractor fails to observe, perform and keep each and every one of the covenants, agreements, provisions, stipulations and conditions to be observed, performed and kept by Contractor in this Agreement, or any agreement entered into pursuant to any such agreements;
 - (ii) if Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency;
 - (iii) if Contractor has made an assignment of the Agreement without the required consent of the City; and
 - (iv) if Contractor fails to provide Food Concession services as required under the terms of this Agreement.
- (d) The City may conduct inspections, audits, and assessments of Contractor’s performance to verify that all duties, financial records, responsibilities and obligations of Contractor are being performed in accordance with the provisions of this Agreement and to the quality standards set out in this Agreement.

7.0 Dispute Resolution Procedures

The parties will make reasonable efforts to resolve any dispute, claim or controversy arising out of this agreement or related to this agreement (“**Dispute**”) using the dispute resolution procedures set out in this section.

(a) Negotiation

The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

(b) Mediation

If all or any portion of a dispute cannot be resolved by good faith negotiations within 30 days, either party may by notice to the other party refer the matter to mediation. Within 7 days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kelowna, British Columbia. Each party will equally bear the costs of the mediator and other out-of pocket costs and each party will bear its own costs of participating in the mediation.

8.0 Compensation to the City

- 8.1 The initial Agreement, with an optional renewal for the following years, will commence immediately upon authorization of an Agreement for Mobile Concession in the beach parks. **The Proponent will pay a monthly fee as detailed in Appendix C Fees Schedule.**

9.0 Independent Contractor

- 9.1 Nothing in this Agreement shall be construed as to constitute a partnership between the City and Contractor. The duties to be performed and the obligations assumed by Contractor under this Agreement shall be performed and assumed by it as an independent Contractor and not an agent or in any other way a representative of the City. In no circumstances shall Contractor have any authority to represent or contract on behalf of or otherwise bind the City.

- 9.2 Contractor is and shall at all times during the performance of this Agreement be an independent Contractor, and at no time shall Contractor be considered an agent, servant, or partner of the City; and all persons employed by Contractor to perform its obligations under the Agreement shall be its employees or servants and not the employees, servant, or agents of the City.

9.3 Employees

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned, and shall devote only his best-qualified personnel to work on this project. Should the City deem anyone employed on the work incompetent or unfit for his duties, and so inform the Contractor, Contractor shall immediately remove such person from work under this contract and he/she shall not again, without written permission of the City, be assigned to work under this contract. All Contractor employees working in the City must complete and clear a criminal record check.

10.0 Liaison

- 10.1 Each party shall maintain liaison with the other party in accordance with their respective obligations under this Agreement. In particular:

- Contractor shall appoint a representative ("Contractor's Representative") who shall have the duty of instituting and maintaining liaison with the City as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of Contractor's Representative; and
- The City shall appoint a representative ("City's Representative") who shall have the duty of instituting and maintaining liaison with Contractor as to the requirements of this Agreement, plus an alternative representative to so act in the absence or inability to act of the City's Representative.

- 10.2 Each party's representative shall have the full power and authority to act on behalf of and to bind such party in all administrative issues and to carry out such party's obligations hereunder and each party's representative may be relied upon by the other party as the

official representative of such party. Meetings between the Contractor Representative and the City's Representative may be held by telephone with the consent of all parties participating in such meetings. Each party may change their respective representative or alternative representative by written notice to the other.

11.0 Governing Law

- 11.1 This agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the construction, breach, or alleged, threatened or anticipated breach of this Contract and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Contract, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.
- 11.2 Notwithstanding any provisions herein, the Contractor(s) shall in the performance of the contract comply with provisions of The Employment Standards Act and Regulations of British Columbia and City of Kelowna Policies and By-laws and Parks, Recreation and Cultural Services Policies and By-laws and any amendment thereto and without limiting the generality of the foregoing, the Contractor(s) shall pay all of the Contractor(s) employees as required by the Act and the regulations then in force.

12.0 Waiver - City

- 12.1 Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 12.2 No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

13.0 Waiver - Contractor

- 13.1 Any failure of the Contractor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Contractor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.

- 13.2 No action or want of action on the part of the Contractor at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the Contractor of any of its said rights or remedies.

14.0 Subcontractors

- 14.1 Contractor shall not subcontract the whole of the work nor shall any part of the work be subcontracted without the prior written consent of the City's Representative, which consent may not be arbitrarily withheld in the City Representative's sole discretion.
- 14.2 The subcontracting of any of its duties, obligations or responsibilities of Contractor under this Agreement shall not relieve it of the responsibility for the proper commencement, execution or completion of the duties, obligations or responsibilities as set out herein and Contractor shall be fully responsible for the acts, omissions and debts of its subcontractors.

15.0 Amendments

No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

16.0 Survival of Covenants

All obligations of each of the parties which expressly or by their nature survive termination or expiration or assignment of this Agreement including, without limitation, the indemnities in section 20.0 shall continue in full force and effect subsequent to and notwithstanding such termination or expiration or assignment and until they are satisfied or by their nature expire.

17.0 Confidentiality of Information

The Contractor should be aware that the City of Kelowna is a "public body" defined by and subject to the *Freedom of Information and Protection of Privacy Act* of British Columbia.

18.0 Non Assignability

This Agreement may not be assigned by Contractor without the prior written consent of the City. For the purpose of this Agreement, a change in the corporate control of Contractor, shall be deemed to be an assignment requiring the consent of the City pursuant to the terms hereof.

19.0 Joint and Several

If this Agreement is executed by more than one person, firm or Corporation, it is understood and agreed that all persons, firms or Corporations executing this Agreement are jointly and severally liable under and bound by this Agreement.

20.0 Force Majeure

Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by Contractor arises out of a default of its subcontractor, and if such default arose out of causes beyond the control of both Contractor and subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the products or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule, (where provided).

21.0 Insurance & Indemnity

21.1 Indemnity Save Harmless

Contractor agrees to indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, liabilities, demands, actions, proceedings, loss and expense (including legal costs) whatsoever for damage to or destruction or loss of property and loss of use thereof, and injury to or death of any person or persons arising directly or indirectly out of (i) the installation, operation, use, relocation, removal, maintenance and/or repair of any/all equipment or of property of Contractor (ii) the performance, purported performance or non-performance of this Agreement, or (iii) any act of negligence, willful misconduct or omission by Contractor, its employees subcontractors and agents except only where such death, injury to persons or damage to property is due to the sole negligence of the City.

21.2 Insurance

The Contractor shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances in forms and amounts acceptable to the City as detailed in Appendix A

21.3 Compliance with Statutes, By-laws & Regulations

The Contractor shall in the performance of the Agreement, comply with all applicable City By-laws, and all amendments thereto and The Consumer Protection Act, R.S.B.C. 1996, c.69, and any other applicable acts or regulations.

All equipment/vehicles used for the work outlined in the Agreement must comply with the Motor Vehicle Act, R.S.B.C. 1996, Chapter 318 and Regulations, as amended and the Commercial Transport Act, R.S.B.C. 1996, Chapter 58 and Regulations, as amended.

All principal vehicles of the Contractor will be identified with signs setting out its name and telephone number. Employee owned vehicles, which may be periodically used for company business, will not necessarily be marked.

22.0 Occupational Health and Safety

22.1 The Contractor agrees that it is the Prime Contractor for the purposes of the *Workers Compensation Act*. The Contractor shall have an occupational health and safety program acceptable to the WorkSafe BC Board and shall ensure that all WorkSafe BC Health & Safety Regulations are observed during performance of this Contract, not only by the Contractor, but by all workers, subcontractors, employees, personnel, servants and others engaged in the performance of this Contract.

22.2 The Contractor and its workers, subcontractors, employees, personnel, servants and others engaged in the Services shall conform to all current occupational health and safety laws, by-laws, or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the Services hereunder immediately as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected.

22.3 Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City against any loss or expense or penalty suffered or incurred by the City by reason of failure of the Contractor, its agents or employees, or any subcontractors of the Contractor, its agents or employees to comply or ensure compliance with the health and safety laws, by-laws and regulations mentioned above.

23.0 WorkSafe BC Coverage

23.1 The Contractor agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for full WorkSafe BC coverage for itself and all workers, subcontractors, employees, personnel, servants and others engaged in or upon any Services. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Contract until the WorkSafe BC premiums, assessments or penalties in respect of the Services done or Services performed in fulfilling this Contract have been paid in full.

- 23.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from the WorkSafe BC confirming that the Contractor is registered in good standing with the WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligations to pay monies under this Contract.
- 23.3 The Contractor shall indemnify and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Contract or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by WorkSafe BC.

24.0 Conflict of Interest

A council member or any employee of the City shall not have a direct or indirect interest in a Company or own a Company that is the successful Contractor.

The Contractor shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its sole discretion, withhold the contract from the Contractor until the matter is suitably resolved. And further, that if during the conduct of the contract, the Contractor is retained by another client giving cause to a potential conflict of interest, then the Contractor shall so inform the City. If a significant conflict of interest is deemed by the City to exist, then the Contractor shall refuse the contract or shall take such steps as are necessary to remove the conflict of interest.

Contractor shall disclose to the City Representative, prior to awarding of the Contract, any actual, potential or apparent conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the Contract from the Contractor until the matter is resolved to the satisfaction of the City.

Contractor will upon request, provide all pertinent information regarding ownership of their company. This information to be supplied within forty-eight (48) hours after request.

25.0 Non-liability of City Officials

Under no circumstances shall any officer, employee, or agent of the City of Kelowna acting within the course and scope of his/her City responsibility be personally liable to the Contractor, or any party claim through or on behalf of the Contractor, with regards to the contract, including but not limited to its negotiation, execution, performance, or termination.

26.0 Protection and Security

- a) **Acknowledgment of Proprietary Materials/Limitations on Use.** Contractor acknowledges that the records are unpublished work for purposes of copyright law and embodies valuable confidential and secret information of the City. The Contractor will treat such information so received in confidence and will not use, copy, disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under the Agreement. Notwithstanding the above, nothing herein shall prevent the Contractor

from utilizing same or similar information, if it is independently provided by a third party or independently developed in-house.

- b) **Property Rights.** Each party acknowledges and agrees that the other party's products and all other material related thereto constitute valuable trade secrets of the party furnishing the products or materials, or proprietary and confidential information of such party, and title thereto remains in such party. All applicable copyrights, trade secrets, patents and other intellectual and property rights in the products and related material are and remain in the party furnishing such products. All other aspects of the products and related material, including without limitation, technologies, procedures, programs, methods of processing, specific design and structure of individual programs and their interaction.

27.0 Business Licence

The Contractor shall have or obtain a City of Kelowna Business License and shall keep the license current for the duration of the contract term.

28.0 Contractor Performance Review

Contractor's performance will be evaluated by the City no less than annually on the following criteria:

- ❖ Volume of customer complaints.
- ❖ Service levels.
- ❖ Cleanliness of sites.
- ❖ Adherence to the terms and conditions of this agreement.

29.0 Business Review & Planning

- 29.1 Contractor agrees to conduct annual business review meetings with Property Management Department Representatives if required.

30.0 Enurement

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

31.0 Service of Notices

- 31.1 All notices and other communications required or permitted to be given hereunder shall be in writing and may be given by (i) facsimile transmission, if the matter is urgent or immediate; (ii) personally delivered; or (iii) transmitted by prepaid registered mail, to the party to whom such notice or communications is being given at the following address or fax number:

(City Representative)

Attention: Ron Forbes
Manager, Property Management
City of Kelowna
1435 Water Street, Kelowna, British Columbia V1Y 1J4
Telephone: 250-469-8669 Fax No.: 250-862-3349
E-mail: rforbes@kelowna.ca

(Contractor Representative)

Attention: Mike Clarke
Telemark Sports Inc. dba Fresh Air
18-2070 Harvey Avenue
Kelowna, British Columbia V1Y 8P8
Telephone 250-212-2639
Email: mike@freshair.ca

- 31.2 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted and executed on behalf of the parties this ____ day of May 2013

TELEMARK SPORTS INC. DBA FRESH AIR
by its authorized signatories



CITY OF KELOWNA
by its authorized signatories:

Appendix A - Insurance Requirements

1. Contractor To Provide

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- 2.1 WorkSafe BC Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.
- 2.2 Comprehensive General Liability Insurance
 - (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
 - (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
 - (iv) providing for Completed Operations Liability to continue for a period of 24 months after total completion of the Work or any part of the Work.
 - (v) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level.
 - (vi) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.
- 2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 2.4 All Risks Insurance for loss of or damage to all Contractor's equipment, owned, leased or for which Contractor may otherwise be responsible and used or to be used in the performance of the Work. This insurance shall be for an amount not less than the replacement cost value of the equipment. In the event of loss or damage, Contractor shall if so requested by the City, forthwith replace such lost or damaged equipment. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.
3. **The City Named As Additional Insured**
The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.
4. **Contractor's Subcontractors**
The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. **Certificates of Insurance**
The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the City prior to commencing the Work or providing the Services. Such Certificates shall provide that 30 days' written notice shall be given to the Risk Management Department of the City, prior to any material changes or cancellations of any such policy or policies.
6. **Other Insurance**
After reviewing the Contractor's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. **Additional Insurance**
The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The Contractor shall ensure that all of its subcontractors are informed of and comply with the City's requirements set out in this Appendix A.
8. **Insurance Companies**
All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. **Failure to Provide**
If the Contractor fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Contractor. The Contractor expressly authorizes the City to deduct from any monies owing the Contractor, any monies owing by the Contractor to the City.

10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Contractor as stated in section 9.

APPENDIX A-1



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation
 City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____

Title _____

Company (Insurer or Broker) _____

Signature of Authorized Signatory _____

Date _____

APPENDIX B - SCOPE OF SERVICES

General Scope of Services of the Contractor

The Contractor will provide, equip and operate a concession within the designated area of the concession building during the period of May 15th to September 15th of each year beginning May 27th, 2013. The Contractor will provide service at the concession location at a minimum between 10:00am to 8:00pm, 7 days per week, weather permitting, during the core season from the last weekend in June until Labour Day in September. The shoulder season operation will be from 12:00pm to 4:00pm daily, weather permitting. The Contractor is to supply this service for a one (1) year period with the option of extending for four (4) additional one (1) year terms at the sole discretion of the City.

1. The Contractor will provide bicycle and helmet rentals for use by the public.
2. The Contractor shall maintain all equipment to such standards as will ensure safety for operators. The Contractor will ensure the renters are fully aware of the safe operation of the bicycles and that the bicycles are not permitted on sidewalks.
3. The Contractor shall ensure that no persons too young to operate the proposed activity are permitted to use them, and shall ensure that no persons operating the proposed activity do so in an unsafe manner.
4. At a minimum the Contractor shall operate during the period of May 15th to September 4th of each year, with the exception of the first year which will begin May 27th, 2013.
5. The Contractor will provide service between 10 am and 8 pm, 7 days per week, weather permitting. The contractor may start earlier or stay open later depending on demand.
6. The Contractor is to supply this service for a one (1) year period with the option of extending for an additional four (4) one (1) year terms at the sole discretion of the City:
 - a. The extension, if offered, will retain all of the terms and conditions of the original contract or subsequent extension; and
 - b. Such option period will be negotiated at the sole option of the City on the basis of the rental rate not being less than the rent bid for 2013.
7. The Contractor will pay permits, taxes and licenses.
8. The Contractor will clean and maintain the area surrounding the concession to the satisfaction of the City, including clean-up of litter from the immediate area (a radius of 30 meters from the concession).
9. The Contractor shall comply with all regulations regarding fire, traffic, safety and shall acquire all necessary permits.

10. No outside advertising will be permitted without the consent of the City.
11. No food other than bottled water and sports bars will be permitted to be provided.
12. Solicitation of the public is not allowed.
13. The Contractor will be responsible to communicate with the City of Kelowna Outdoor Events Committee and review the Outdoor Events Calendar to determine the dates the area will be closed for special events, and as a result will also be closed for the concession operation, unless agreement can be reached with the event organizer.
14. The Contractor may not sublet, nor assign the contract without the written consent of the City. If approved by the City the minimum amount for such assignment shall be \$500.00 payable by the Contractor to the City.
15. The Contractor is required to supply a bid deposit in the form of a certified cheque payable to the City of Kelowna in the amount of \$1,000. The deposit of the successful Contractor will be retained as a “performance deposit”.
16. The Contractor shall be allowed to display one professionally made sign at the space allotted. The sign is subject to City approval prior to posting.
17. There will be no structure provided. If the Contractor wishes to provide a structure the Contractor will be required to meet all regulations and Bylaws and any design must be approved by the City’s Infrastructure Planning department.
18. There will be no power available.
19. Prior to awarding the bid to the successful Proponent, the Proponent must prove to the City ownership of the activity equipment listed in the proposal.
20. The City will not provide on-site parking for the Contractor’s vehicle and towing equipment.
21. Retail items will be limited to sunscreen, sunglasses, hats, bicycle helmets, bike gloves and lip balm.

APPENDIX C - FEE SCHEDULE

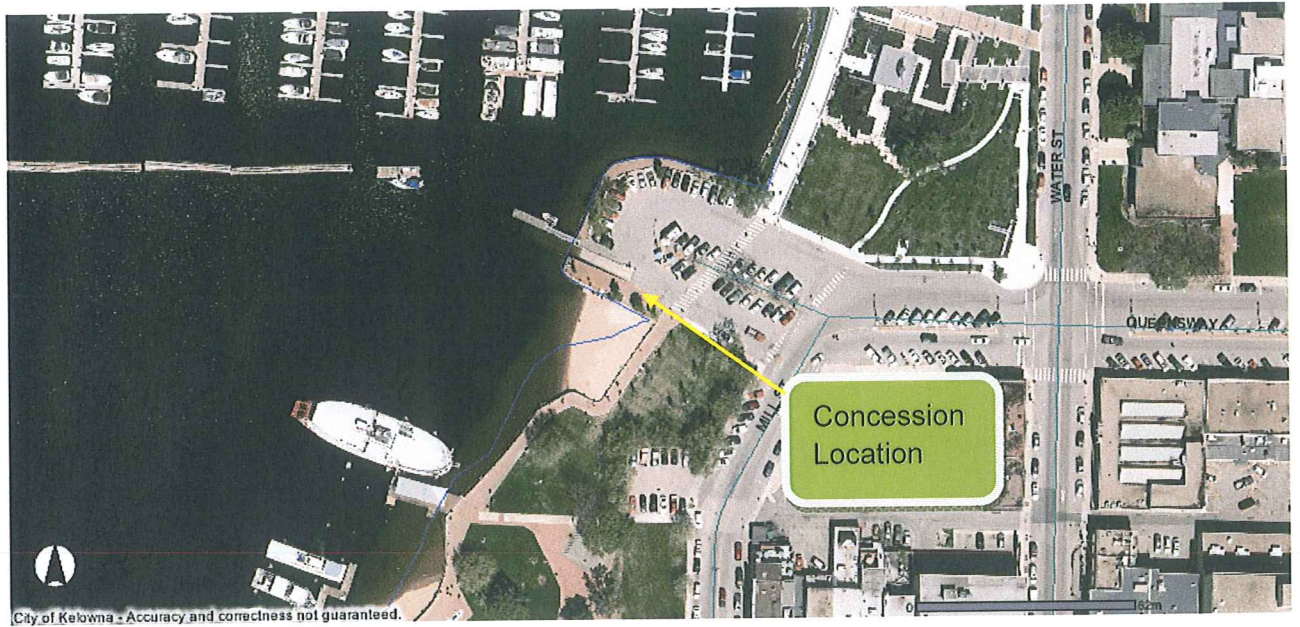
2013

The contractor acknowledges and agrees to pay to the City of Kelowna the total sum of \$3,840 for May 15th to September 15, 2013 plus Tax. Payment will be on or before as follows:

Total Minimum Instalment			
June 15, 2013	\$960	+ 5% (GST) \$48	= \$1,008
July 15, 2013	\$960	+ 5% (GST) \$48	= \$1,008
August 15, 2013	\$960	+ 5% (GST) \$48	= \$1,008
September 15, 2013	\$960	+ 5% (GST) \$48	= \$1,008

Applicable taxes subject to change

APPENDIX D - PREMISE



Appendix E - Concession Bid from Fresh Air Experience



Queensway Bicycle Rental
Activity Concession Bid

Table of Content

History of Fresh Air

Profile of Trek Bicycles

Rental Product and Rates

Insurance

Site Plan

Suggested Rides and Map

Other Products

Sustainable Business Case

History of Fresh Air

Fresh Air was established in 1981 by Jim and Karen Bates and has become a brand that represents quality products and customer service in Kelowna over the last 32 years. Immersing ourselves in the community through events and clubs has been at the foundation of Fresh Air's success. Fresh Air Experience has offered Kelowna residents run, bike and winter sports products for over 32 years. In 2008 Fresh Air Concept was opened in the mission and has quickly become the preferred Bike Shop for many in Kelowna. Fresh Air Concept have been offering bike and snow sports rentals for the last 2 years. Fresh Air has a clientele of local and destination travellers that currently look to us for bike rental. Fresh Air's mandate in the bike rental business has been to maintain a high quality of product through bike maintenance and product renewal programs.

Over the course of the last 5 years Fresh Air has become an expert in off site retail operations taking retail offerings to Triathlons, Granfondo's, ski swaps and bike swaps. Currently Fresh Air has a contract with the Kelowna Apple Triathlon to operate the retail expo for the next 3 years and recently operated the inaugural MS Rona Bike Swap as well. Through these opportunities Fresh Air has shown the ability to set up and manage offsite sales providing excellent service and experience for customers. It has also given us the expertise to run our POS system offsite using wireless Internet service and alternate power sources.

In the growth of the company Fresh Air has added 2 individuals to its management team with over 12 years managing rental businesses at 4 season resorts. This experience included snow sport and bike rentals.

Profile of Trek Bicycles

Trek is the biggest bicycle wholesaler in the world and also one of the biggest manufacturers in the world. Trek has 1700 retailers in North America and subsidiaries in Europe and Asia along with distributors in 90 countries worldwide.

Trek's mission statement in 1976 was to build the best bikes in the world. Today, they've added to their mission: Help the world use the bicycle as a simple solution to complex problems. With this belief Trek has endorsed reducing their carbon footprint, developing the best product in multiple styles of bike through athletes and the best engineers and focusing on bicycle advocacy within communities. Trek's partnership in this initiative gives us a great product for multiple styles of cyclist.

Rental Product and Rates

Pathway Comfort and Family

Perfect for paved trails while sightseeing or visiting the downtown area. Sizes available for Adults and Children above the age of 6.



Pure and Pure Lowstep

7 speeds, feet first technology provides confidence and stability, comfort saddles.

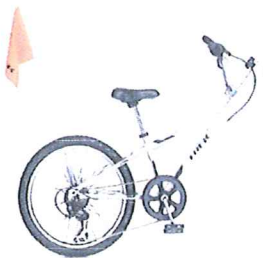


Mt220

24 Inch Wheel, front suspension, 21 speeds, v brakes

Jet 20 S

20 Inch Wheel, rear brake and coaster brake mixture



Mt 206

The MT 206 child trailer is a perfect option for children with safety features built in. Independent v-brakes and 6 speeds gearing with a free hub for the rear tire. 20-inch tire is perfect stand over for kids.

The Power of 2

Try something different. Explore the City with the help of a friend



T900

The T 900 is a super fun bike! Tandem bikes are in high demand at similar bike rental operations around the country. 21 speeds, shock seat post for the rider in the back and v brakes.

Off Road Excitement

These are the perfect bikes to explore some of Kelowna's beautiful parks including Knox Mountain, the greenway or the KVR.



Wahoo 29er

The Wahoo 29er is trail ready while it's unbeatable efficiency and momentum will carry you wherever you want to go. 24 speeds, 29er wheels and disc brakes.

Need for Speed

We've got a fast aluminum, 700cc wheeled bike for you to cruise the waterfront or head out to the orchards and visit a winery or Five.



7.2 FX

The 7.2 FX is a perfect fitness bike that will take you anywhere you want to go fast. The 7.2 FX is a perfect mixture of road bike speed with city bike comfort. 24 speed, 700cc wheels and v brakes.

Helmets



Men's 55cm – 63cm



Women's 50cm -58cm



Youth 48cm -56cm

Pricing

	1 Hr.	3hr	6hr	24hr	1 wk.	2 wk.	3 wk.
Pathway Comfort and Family	\$9	\$20	\$30	\$38	\$90	\$125	\$160
The Power of Two	\$18	\$40	\$60	\$70			
Off Road Excitement	\$15	\$35	\$45	\$50	\$110	\$160	\$200
Need for Speed	\$15	\$35	\$45	\$50	\$110	\$160	\$200

Helmet provided with every rental.

Lock Rental available \$3 per rental

Car Racks \$10 per rental

Insurance

Currently Fresh Air is insured through Capri insurance for our property, liability and rental coverage. We have contacted Capri to ensure that we will be able to comply with the demand of a certificate of insurance with \$2000000 in coverage for bodily injury, and property damage inclusive. Insurance is based on all participants signing waivers and being over the age of 6.

Site Plan

We would like to propose a fixed structure for the duration of the operational period. Ease of opening and fleet maintenance, having a secure POS with CC and debit capability, providing more units in the rental fleet and marketing the rental fleet are all reasons we would like to propose a fixed structure.

The set up time of pulling in a trailer, setting up your POS, ensuring rental product is ready for use, having tools, helmets and other supplies will be difficult without a permanent home. 10 to 8 is a fairly lengthy day and transportation of rentals to and from daily will add another hr.

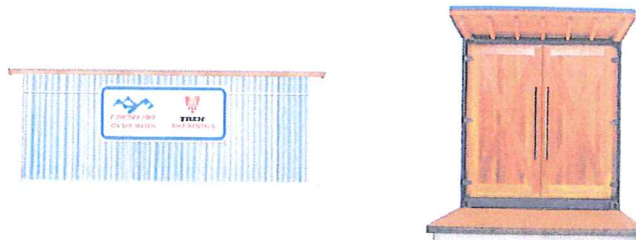
to the schedule. Having tools and a stand on site with a fixed structure allows us to send mechanic's to maintain the bikes on demand.

We feel that offering CC or debit capability is important for everyone to take advantage of this rental product. Security of being open air with cash and an expensive POS system brings in a lot of variables including theft, weather conditions etc.

We will be able to provide a larger rental fleet if it's in a fixed structure rather than loading and unloading rental bikes daily.

Getting the word out on a business is a challenge for any company in the first year. Having a fixed structure will expose the bike rentals to more visitors and help market the rental operation.

We believe that keeping the look and feel of the downtown waterfront is important to both the City of Kelowna and the Fresh Air brand. We have designed a container to keep the feel of the Stuart Park Zamboni building. This container can be put in place for May 15th and removed Sept 4th for the winter months. Companies and individuals are using containers as homes, offices and retail outlets that have a modern look. A container also provides security for the rental fleet overnight.



Suggested Rides and Map

Fresh Air would build and print a suggested ride map for renters and any other cyclist that would like to have them. These maps would be based on leaving to and from this rental location but would include other suggested rides. Other suggested rides would include the

greenway, KVR and winery tours in South East Kelowna. There will be 2 or 3 suggested rides for each category of bike.

Other Products

We have contacted several other bike rental operations from Vancouver to Ottawa to discuss operational issues and other services. Based off these discussions we feel that there are other products that enhance the operation. Nutrition and water availability, retail products and city branded product were the 3 main categories.

Nutrition and water being a safety concern for people who maybe aren't used to cycling. The product offering would be bottled water, wrapped nutrition bars such as solo bars.

Retail product that is oriented around cycling such as sunglasses, bike gloves, helmets, water bottles, sunscreen, lip balm etc.

City branded product would be t shirts, water bottles, hats that are themed Kelowna prints e.g. "I rode Knox Mountain Kelowna", "Kelowna the bike friendly city". These products would be built around branding Kelowna and cycling in Kelowna.

Sustainable Business Case

Fresh Air will invest roughly \$25000 for a container, container improvements, POS system and rental fleet. Based off our amortization of capital expenses and projected operating cost a 6% of revenue charge by the city would provide Fresh Air with a business case that is sustainable.

We're very excited about this partnership opportunity with the city and feel that we can offer a product that would be unmatched by any other operation.

Please contact Mike Clarke with any question you might have about this proposal. mike@freshair.ca 250 212 2639

Report to Council



Date: May 17, 2013

Rim No. 1140-50

To: City Manager

From: Ron Forbes, Manager, Property Management

Subject: COMMERCIAL LEASE - DUNCAN'S BISTRO & BAR LTD., 375 LAWRENCE AVE.
(CHAPMAN PARKADE)

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a five (5) year Commercial Lease, with Duncan's Bistro & Bar Ltd., with the option to renew for an additional five (5) year term, in the form attached to the Report of the Manager, Property Management, dated May 13, 2013;

AND THAT the Mayor and City Clerk be authorized to execute the agreement.

Purpose:

That Council approve the Lease to Duncan's Bistro & Bar Ltd.

Background:

Pursuant to an Assignment of Lease in May 2010, the current Tenant, Duncan's Bistro & Bar Ltd., has operated a successful café from a City-owned commercial space located on the lower level of the Chapman Parkade fronting Lawrence Avenue. The original term of five (5) years plus a renewal term of five (5) years has expired and a new lease has been requested by the tenant.

The Lease has been maintained in good standing. Therefore in January 2013, Staff commissioned a five year review and market rent estimate to ensure fair market value was reflected in the proposed new lease. The review was undertaken by Kent McPherson Appraisals and returned an average value for this tenant of \$14.70/sq.ft. for the first five (5) year term. This value is consistent with lease comparables in the downtown core and represents an increase of 1.4% over the previous five (5) year lease term.

The new lease contemplates a further five (5) year renewal at the City's sole discretion and is subject to a five year rent review to set new rental rates if the market dictates a change in rates.

This Commercial Lease represents our Corporate Focus of Responsive Customer Service in that we understand evolving needs and ensure services are appropriate and accessible.

Legal/Statutory Authority:

Community Charter, Sec. 26 - Disposal of Municipal Property

Legal/Statutory Procedural Requirements:

Community Charter, Sec. 94 - Notice Requirements

Considerations not applicable to this report:

Internal Circulation

Existing Policy

Financial/Budgetary Considerations

Personnel Implications

External Agency/Public Comments

Communications Comments

Alternate Recommendation

Submitted by:

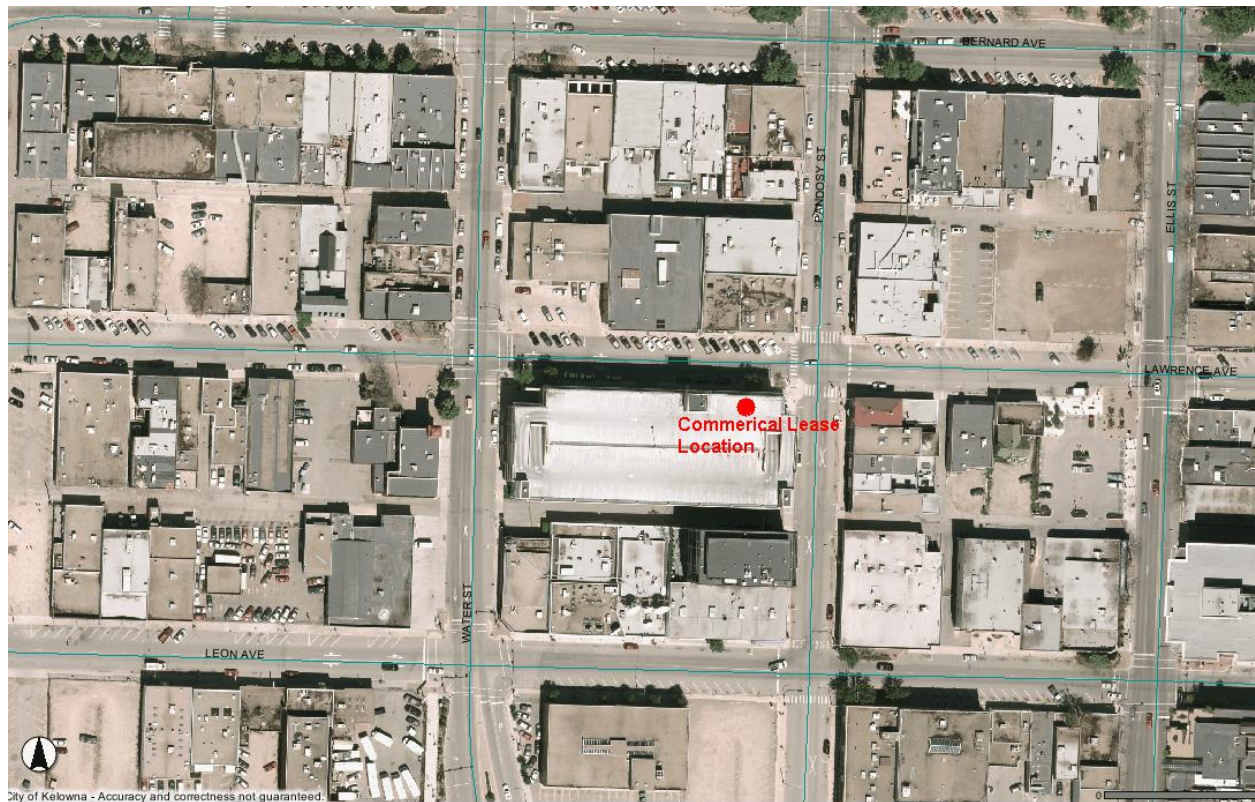
Ron Forbes, RPA
Manager, Property Management

Approved for inclusion:



Derek Edstrom, Acting Director,
Real Estate & Building Services

cc: K. Grayston, Director, Financial Services



BETWEEN:

CITY OF KELOWNA, a municipal corporation having
offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Landlord")

OF THE FIRST PART

AND:

DUNCAN'S BISTRO AND BAR LTD., a business corporation
incorporated under the laws of British Columbia with its head
office at 967 Westview Way, Kelowna, BC, V1Z 3Y9

(the "Tenant")

OF THE SECOND PART

TABLE OF CONTENTS

1. Basic Terms, Schedules and Definitions
2. Premises
3. Term
4. Rent
5. Tenant's Covenants
6. Landlord's Covenants
7. Repair, Damage and Destruction
8. Taxes and Other Costs
9. Utilities and Additional Services
10. Licenses, Assignments and Subletting

11. Fixtures and Improvements
12. Insurance and Liability
13. Environmental Matters
14. Subordination, Attornment, Registration, and Certificates
15. Occurrence of Default
16. Tenant's Default, Remedies of Landlord and Surrender
17. Miscellaneous

THIS LEASE, dated the 1st day of February 2013, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

Basic Terms:

- | | | |
|-----|-------------------------------------|---|
| (a) | Landlord:
Address of Landlord: | CITY OF KELOWNA
City Hall, 1435 Water Street
Kelowna, B.C. V1Y 1J4
Fax: 250-862-3349
Email: tabrahamson@kelowna.ca |
| (b) | Tenant:
Address of Tenant: | Duncan's Bistro and Bar Ltd.
967 Westview Way, Kelowna, BC, V1Z 3Y9 |
| (c) | Premises: | 375 Lawrence Avenue, Kelowna BC V1Y 9W5
(see Schedule A) |
| (d) | License Area: | (see Schedule A) |
| (e) | Initial Term:
Commencement Date: | five (5) years
February 1, 2013 |
| (f) | Renewal Term (if any): | one (1) renewal term of five (5) years |
| (g) | Annual Base Rent + Tax: | Feb. 1/13-Jan. 31/14 - \$14.50/sq.ft. + tax
Feb. 1/14-Jan. 31/15 - \$14.50/sq.ft. + tax
Feb. 1/15-Jan. 31/16 - \$14.50/sq.ft. + tax
Feb. 1/16-Jan. 31/17 - \$15.00/sq.ft. + tax
Feb. 1/17-Jan. 31/18 - \$15.00/sq.ft. + tax |
| (h) | Property Taxes: | Included in Triple Net Budget (see Section 8) |
| (i) | Utilities: | Included in Triple Net Budget (see Section 8) |
| (j) | Permitted Use: | For the purpose of the conduct of the Tenant's
business as a bistro and bar. |

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A	Site Plan of Premises
B	Definitions
C	Rules and Regulations
D	Landlord & Tenant Responsibility Checklist

1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

2. PREMISES AND LICENSE AREA

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

3. TERM

3.1 Term

The Term of this Lease, and the related License, shall be for the initial term of five (5) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the initial Term of five (5) years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of five (5) years observed and performed the covenants and conditions herein contained

then the Landlord shall grant to the Tenant at the Tenant's expense a renewal lease of the Premises for the Renewal Term(s) of five (5) years upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained.

The lease may be renewed one (1) time for a period of five (5) years, for a total lease term of ten (10) years including the original term.

4. RENT

4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

(b) Additional Rent

In addition, but subject to any operating costs the Landlord expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises including all applicable real estate taxes and other charges.

4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via post-dated cheques on a monthly basis.

4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

4.6 Net Lease

The Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Premises whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

5. TENANT'S COVENANTS

5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, to use the Premises only for the purpose set out in clause 1(j) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant

shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises in the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.

(h) Overholding

That if the Tenant shall continue to occupy the Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(i) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Landlord.

(j) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection or making repairs, alterations, or improvements to the Premises as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(k) Showing Premises

To permit the Landlord and its authorized agents and employees to show the Premises to prospective tenants during the normal business hours of the last three months of the Term.

6. LANDLORD'S COVENANTS

6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

7. REPAIR, DAMAGE, AND DESTRUCTION

7.1 Landlord's Repairs

The Landlord covenants with the Tenant that the major building components will be maintained in a good and reasonable state of repair, consistent with the general standards of structures of similar age and character in Kelowna. This includes the main structure, roof and mechanical systems.

7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and License Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

7.3 Abatement and Termination

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises:

- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
 - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid,

Rent shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy; and

- (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2 shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and
- (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option, exercisable by written notice to the Tenant or Landlord, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and License Area to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

8. TAXES AND COMMON AREA COSTS

8.1 Tenant's Tax Obligations

The Tenant covenants with the Landlord:

- (a) to pay when due, all Taxes, business Taxes, business licence fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Premises by the Tenant, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay to the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Land and Building that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;

- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and
- (c) to pay to the Landlord in the manner specified in sub-clause 4.2(b) the Tenant's Share of the Tax Cost.

8.2 Goods and Services Tax

The Tenant shall pay to the Landlord Goods and Services Tax in accordance with the applicable legislation at the same time as the amounts to which such Goods and Services Tax apply are payable to the Landlord under the Terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. The Landlord will provide the Tenant with its Goods and Services Tax registration number. Notwithstanding any other section of this Lease, the amount payable by the Tenant under this clause shall be deemed not to be Rent, but the Landlord shall have the same remedies for and rights of recovery of such amount as it has for recovery of Rent under this Lease.

8.3 Tenant's Tax Cost

After the commencement of the Term of this Lease and prior to the commencement of each fiscal period determined by the Landlord thereafter which commences during the Term, the Landlord may estimate the Tax Cost, or any instalment on account thereof, to become due on any date during the ensuing fiscal period or (if applicable) portion thereof, as the case may be, and the amount thereof which will be payable by the Tenant, and notify the Tenant in writing of such estimate. If the Tenant has overpaid such Tax Cost, the Landlord shall refund any excess paid, but if any balance remains unpaid, the Landlord shall fix monthly instalments for the then-remaining balance of such fiscal period or portion thereof such that, after giving credit for instalments paid by the Tenant hereunder in respect of such calendar year, the entire Tenant's Share of Tax Cost will be fully payable prior to the time the Landlord is obliged to pay the Taxes in respect of which the Tenant's Share of Tax Cost is payable. If for any reason the Tax Cost is not finally deterred within such fiscal period or portion thereof, the parties shall make the appropriate re-adjustment when such Tax Cost becomes finally deterred. The Landlord and the Tenant acknowledge that Taxes in respect of the Building may be payable during the course of a year as pre-payment for the Taxes accruing due in respect of such year, and if the Term ends during a year, then the appropriate adjustment will be made under clause 4.3. Any report of the Landlord's accountant as to the Tax Cost shall be conclusive as to the amount thereof for any period to which such report relates.

8.4 Receipts for Payment

Whenever requested by the Landlord, the Tenant will deliver to it receipts for payment of all Taxes, rates, duties, levies, and assessments payable by the Tenant under sub-clauses 8.1(a) and (b) and furnish such other information in connection therewith as the Landlord may reasonably require.

8.5 Allocation to Particular Tenant

Notwithstanding any of the foregoing, whenever in the Landlord's reasonable opinion any operating cost or item of operating cost properly relates to a particular tenant or tenants within the Building, the Landlord may allocate such operating cost or item of operating cost to such tenant or tenants. Any amount allocated by the Landlord to the Tenant under this clause shall be payable by the Tenant forthwith upon demand.

8.6 Common Area Costs

This Lease shall be absolutely net to the Landlord such that, without limiting the generality of the foregoing, the tenant shall pay for its own account, and without any variation, set-off or deduction, all amounts, charges, costs, duties, expenses, fees, rates, taxes, and increases therein in any way relating to the premises as well as a share of the expenses relating to the operation of the Parkade as estimated in Schedule F (Chapman Parkade Triple Net Budget).

8.7 Payments of Common Area Costs

With respect to any item of common area costs which the Landlord elects to estimate from time to time, the Tenant shall pay to the Landlord such amount, in equal consecutive monthly instalments throughout the applicable period with the monthly instalments of rent as set out in 4.1(b) of this Lease.

8.8 Adjustment of Common Area Costs

Within one hundred and twenty (120) days of the conclusion of each Lease Year, or portion thereof, as the case may be, the Landlord shall compute the actual amount of each item, and make available to the Tenant for examination, a statement to be provided by the Landlord of the gross amount of each item and the Tenant's share thereof, for each year or portion thereof. If the actual amount of such item of common area costs exceeds the aggregate amount of the instalments paid, the Tenant shall pay to the Landlord the amount of the excess within thirty (30) days of the receipt of any such statement. If the contrary is the case, any such statement shall be accompanied by a refund to the Tenant, without interest, provided that the Landlord may deduct from such refund any rent, which is then in arrears. The inadvertence or failure of the Landlord to compute such amount or make available such statement within the one hundred and twenty (120) days shall not affect the Landlord's right to collect or the Tenant's right to be paid any variance.

9. UTILITIES AND ADDITIONAL SERVICES

9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, utilities and services of whatever nature or kind required in connection with the Premises and the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning, garbage disposal, snow clearing. The tenant shall be responsible for obtaining and maintaining a gas operating permit. The tenant shall be responsible for obtaining and maintaining an electrical operating permit. The tenant is responsible for informing the Property Manager, Real Estate and Building Services of the permits and who the Field Safety Representative is.

10. LICENSES, ASSIGNMENTS, AND SUBLETTING

10.1 General

It is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises, to another party without the written consent of the Landlord, such consent not to be unreasonably withheld. Unless the Landlord has consented to such sub-tenancy, assignment or transfer in accordance with this Article 10, the acceptance of any Rent or the performance of any obligation hereunder by any person other than the Tenant shall not be construed as an admission by the Landlord

of any right, title, or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.

10.2 Licenses, Franchises, and Concessions

The Tenant shall not suffer or permit any part of the Premises to be used or occupied by any persons other than the Tenant, any sub-tenants or licensees permitted under this Article, and the employees and invitees of the Tenant, and any such permitted sub-tenant, or suffer or permit any part of the Premises to be used or occupied by any licensee, franchisee, or concessionaire, or suffer or permit any persons to be upon the Premises other than the Tenant, such permitted sub-tenants and licensees, and their respective employees, customers, and others having lawful business with them.

10.3 Assignment and Subletting

The Tenant shall not, without first obtaining the written consent of the Landlord, assign this Lease or sublet the whole or any part of the Premises, unless:

- (a) it shall have received or procured a bona fide written offer to take an assignment or sub-lease which is not inconsistent with, and the acceptance of which would not breach any provision of, this Lease if this clause is complied with, and which the Tenant has determined to accept subject to this section being complied with; and
- (b) it shall have first requested and obtained the consent in writing of the Landlord thereto.

10.4 Request for Consent

Any request for such consent shall be in writing and accompanied by a true copy of such offer, and the Tenant shall furnish to the Landlord all information available to the Tenant and requested by the Landlord as to the responsibility, reputation, financial standing, and business of the proposed assignee or sub-tenant. Within 30 days after the receipt by the Landlord of such request for consent and of all information which the Landlord shall have requested hereunder (and if no such information has been requested, within 30 days after receipt of such request for consent) the Landlord shall have the right upon written notice to the Tenant to:

- (a) in the case of a proposed sub-lease, either sublet from the Tenant any portion of the Premises proposed to be sublet for the Term for which such portion is proposed to be sublet but at the same Annual Base Rent and Additional Rent as the Tenant is required to pay to the Landlord under this Lease for such portion or, if the proposed sub-lease is for all or substantially all of the remainder of the Term, terminate this Lease as it pertains to the portion of the Premises so proposed by the Tenant to be sublet; or
- (b) in the case of a proposed assignment, terminate this Lease.

10.5 If Landlord Terminates

If the Landlord terminates this Lease in accordance with clause 16.4 with respect to all or a portion of the Premises, such termination shall be effective on the date stipulated in the notice of termination which shall not be less than 60 days or more than 90 days following the giving of such notice, and the Tenant shall surrender the whole or part, as the case may be, of the Premises in accordance with such notice, and Rent shall be apportioned and paid to the date of surrender and, if a part only of the Premises is surrendered, Rent payable under clause 4.1 shall thereafter abate proportionately.

10.6 If Landlord Consents

If the Landlord consents to any proposed assignment or subletting, the Tenant shall assign or sublet, as the case may be, only upon the terms set out in the offer submitted to the Landlord as aforesaid and not otherwise. As a condition of the Landlord's consent, the assignee or sub-tenant, as the case may be, shall agree (and will be deemed to have agreed) with the Landlord to observe the obligations of the Tenant under this Lease as the same relate to the space assigned or sublet (except, in the case of a sub-lease, the Tenant's covenant to pay Rent) by entering into an assumption agreement with the Landlord and the Tenant, in the Landlord's then-standard form, and shall pay the Landlord's then-current processing charge and solicitor's fees and disbursements for preparing such agreement. The Tenant further agrees that if the Landlord consents to any such assignment or subletting, the Tenant shall be responsible for Improvements and all other expenses, costs, and charges with respect to or arising out of any such assignment or subletting. Notwithstanding any such consent being given by the Landlord and such assignment or subletting being effected, the Tenant shall remain bound to the Landlord for the fulfilment of all the terms, covenants, conditions, and agreements herein contained. Any consent by the Landlord to any assignment or subletting shall not constitute a waiver of the requirement for consent by the Landlord to any subsequent assignment or subletting by either the Tenant or any assignee or sub-tenant.

10.7 Landlord Not to Unreasonably Withhold Consent

If the Tenant complies with clauses 10.3 and 10.4 and the Landlord does not exercise an option provided to the Landlord under clause 10.4, then the Landlord's consent to a proposed assignment or sublet shall not be unreasonably withheld. The Tenant acknowledges that the Landlord shall not be liable to the Tenant in damages, where, in giving good faith consideration to any request of the Tenant hereunder, it withholds its consent to a proposed assignment or sublease.

10.8 Terms of Consent

If the Landlord consents in writing to an assignment or sub-lease as contemplated herein, the Tenant may complete such assignment or sub-lease subject to the following covenants and conditions:

- (a) no assignment or sub-lease shall be valid and no assignee or sub-tenant shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sub-lease has been delivered to the Landlord; and
- (b) all "Excess Rent", as hereinafter defined, derived from such assignment or sub-lease shall be payable to the Landlord. The Excess Rent shall be deemed to be and shall be paid by the Tenant to the Landlord as Rent. The Tenant shall pay the Excess Rent to the Landlord immediately as and when such Excess Rent is receivable by the Tenant.

As used herein, "Excess Rent" means the amount by which the total money and other economic consideration to be paid by the assignee or sub-tenant as a result of an assignment or sub-lease, whether denominated as Rent or otherwise, exceeds, in the aggregate, the total amount of Annual Base Rent and Additional Rent which the Tenant is obligated to pay to the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet, less the reasonable costs paid by the Tenant for additional improvements installed in the portion of the Premises subject to such assignment or sub-lease by the Tenant at the Tenant's sole cost and expense for the specific assignee or sub-tenant in question, reasonable leasing costs (such as brokers' commissions and the fees payable to the Landlord under clause 10.1) paid by the Tenant in connection with such assignment or sub-lease, and the amount of Annual Base Rent and Additional Rent the Tenant is obligated to pay the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet that is not occupied or used by the Tenant, until the date of such assignment or sub-lease. In determining the amounts to be deducted from Excess Rent in each monthly payment period in respect of the Tenant's costs of

assigning or sub-leasing, such costs shall be amortized without interest over the Term (in the case of an assignment) or Term of the sub-lease (in the case of a sub-lease) on a straight line basis.

11. FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by

the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

12. INSURANCE AND LIABILITY

12.1 Landlord's Insurance

The Landlord shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the Landlord in the Premises except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The Landlord may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

12.2 Tenant's Insurance

The Tenant shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises and the Tenant's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and

- (b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the Landlord as a named insured as the Landlord's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements;

and if the Landlord shall require the same from time to time, then also:

- (c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and
- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Tenant in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the Landlord has no reasonable objection and shall provide that such insurers shall provide to the Landlord 30 days' prior written notice of cancellation or material alteration of such terms.

The Tenant shall furnish to the Landlord the completed certificate as set out in Schedule D or other evidence acceptable to the Landlord as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Tenant shall also furnish to the Landlord certificates of other evidence acceptable to the Landlord as to the insurance from time to time required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the Landlord reasonably requires. If the Tenant shall fail to take out, renew and keep in force such insurance the Landlord may do so as the agent of the Tenant and the Tenant shall repay to the Landlord any amounts paid by the Landlord as premiums forthwith upon demand.

12.3 Limitation of Landlord's Liability

The Tenant agrees that:

- (a) the Landlord shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the Landlord be liable:
 - (i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;

- (ii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other person;
 - (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Landlord in effect from time to time or of any lease by another tenant or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
 - (iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the property;
 - (v) for the failure to do anything required to be done by the Landlord.
- (b) The Tenant releases and discharges the Landlord from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the Landlord is not liable under sub-clause 12.3(a), notwithstanding that negligence or other conduct of the Landlord or anyone for whose conduct the Landlord is responsible may have caused or contributed to such matter.

12.4 Indemnity of Landlord

The Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, sub-tenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

13. ENVIRONMENTAL MATTERS

(a) Definitions

For the purposes of this Section and Agreement, the following terms shall have the following meanings:

- (i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);
- (iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and

safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

(iv) "Release" includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

(b) Tenant's Representations and Warranties

The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

(i) except as disclosed to the City in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and

(ii) except as disclosed to and approved in writing by the City, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.

(c) Condition of Premises

The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.

(d) Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

(e) Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

(f) Evidence of Compliance

The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the

City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.

(g) Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.

(h) Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.

(i) Access by City

Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.

(j) Authorizations

The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

(k) Notices

The Tenant shall promptly notify the City in writing of:

- (i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- (iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

(iv) the Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

(l) Removal of Contaminants

Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

(m) Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City, notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

(n) Indemnity

The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

(i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or

- (ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

(o) Survival of Tenant's Obligations

The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

14.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

(a) Sale or Financing of Building

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

(b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

(c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

15. OCCURRENCE OF DEFAULT

15.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises.

15.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

16.1 Remedying by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, the Landlord:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 15%

of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;

- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

16.2 Remedies Cumulative

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or the general law.

65.3 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, or regulations and other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or
- (c) if without the written consent of the Landlord the Premises shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or
- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Building from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises by the Tenant or any assignee, sub-tenant, or licensee of

the Tenant or anyone permitted by the Tenant to be upon the Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or

- (h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises to the Landlord in accordance with clause 16.8.

16.5 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises or if this Lease is terminated by reason of any event set out in clause 16.3, then without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises in good order, and the expenses of repairing the Premises and preparing them for re-letting.

16.6 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any of the fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona

fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlord's consent, repudiate or disclaim or attempt to repudiate or disclaim or seek any order to permit it to repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and, if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

16.7 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and re-let them (for a Term or Terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefor, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any Rent derived from re-letting the Premises upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

16.8 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.3. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises, the Building, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

17. MISCELLANEOUS

17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or

conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

17.3 Time of Essence

Time shall be of the essence in this Lease.

17.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

17.7 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

17.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

17.9 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

17.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the Premises were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

17.11 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

17.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Landlord may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.9 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the Landlord in the presence of:

The City of Kelowna, by its Authorized
Signatories:

Mayor

City Clerk

Witness

Address

Occupation

Duncan's Bar and Bistro Ltd., by its
Authorized Signatories:

[Signature]

Barbara Koruk

Witness

5822 Victoria St.
Address

Salesman Kelowna Honda Powerhouse
Occupation



DEFINITIONS

To Lease Premises at Chapman Parkade Building, Lawrence Avenue, Kelowna, British Columbia

DEFINITIONS

In this Lease the following expressions shall have the following meanings:

"Additional Rent" means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

"Annual Base Rent" means the annual Rent set out in sub-clause 1.1(f) and payable by the Tenant as set forth in clause 4.2.

"Basic Terms" means those terms set out in clause 1.1,

"Building" means the Chapman Parkade Building located on Lawrence Avenue in the City of Kelowna, Province of British Columbia on lands legally described as Lot A, Plan 39412, O.D.Y.D.

"Commencement Date" means the date the Term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

"Current Market Rent" means that Rent that would be paid for improved commercial space in commercial Buildings of similar age and location in Kelowna, British Columbia, as between persons dealing in good faith and at arms' length, without reduction for any cash payment, leasehold improvement allowance, Rent-free period or other inducement.

"Goods and Services Tax" means and includes any and all Goods and Services Taxes, sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales, tax, value added tax, business transfer tax, or otherwise.

"Insured Damage" means that part of any damage occurring to any portion of the Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

"Land" means that parcel of land, on Lawrence Avenue in the City of Kelowna, Province of British Columbia, more particularly described as Lot A, Plan 39412, ODYD.

"Lease Year" means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

"Premises" means that portion of the Building having the municipal address and located on the floor(s) set out in sub-clause 1.1(c), containing the aggregate number of square feet, more or less, of Rentable Area which is set out in sub-clause 1.1(d) and having the appropriate location and configuration shown cross-hatched on the plan(s) attached as Schedule A.

"Leasehold Improvements" means all fixtures, improvements, installations, alterations, and additions now or from time to time hereafter made, erected, or installed, whether by the Tenant, the Landlord or anyone else, in the Premises or in other premises in the Building with the exception of trade fixtures and furniture and equipment not of the nature of fixtures, but includes all partitions however fixed (including movable partitions) and includes all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage.

"Prime Rate" means that rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the Landlord as the annual rate of interest.

"Rent" means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for Goods and Services Tax payable by the Tenant.

"Rentable Area", whether in the case of a whole floor of the Building or in the case of premises comprising part of a floor of the Building, shall be determined by the Landlord's architect or Land surveyor according to the American National Standard Method for Measuring Floor Areas in Office Building ANSI 565.1 - 1980 (re-affirmed 1989), as published by the Building Owners and Managers Association International and in effect as at the Commencement Date.

"Taxes" means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Building, the Land, which are from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

"Tax Cost" for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

"Tenant's Share" means the proportion of Taxes attributed to the Premises.

"Term" means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

SCHEDULE C

RULES AND REGULATIONS

The Tenant shall observe the following Rules and Regulations (as amended, modified, or supplemented from time to time by the Landlord as provided in the Lease):

1. The Tenant shall not use or permit the use of the Premises in such manner as to create any objectionable noises, odours, or other nuisance or hazard, or breach any applicable provisions of municipal bylaw or other lawful requirements applicable thereto or any requirements of the Landlord's insurers and shall keep the Premises tidy and free from rubbish, and shall leave the Premises at the end of each business day in a neat and tidy condition.
2. The Tenant shall not abuse, misuse, or damage the Premises or any of the improvements or facilities therein, and in particular shall not deposit rubbish in any plumbing apparatus or use it for other than purposes for which it is intended, and shall not deface or mark any walls or other parts of the Premises.
3. The Tenant shall not perform, patronize, or (to the extent under its control) permit any canvassing, soliciting, or peddling in the Building.
4. The Tenant shall not do anything that causes damage to the Building or in any way impairs the rights of the Landlord as owner of the Building.
5. The Tenant shall permit the entry of the Landlord at reasonable times into the Premises for the purposes of inspection and other lawful purposed.
6. The Tenant shall refer to the Building only by the name from time to time designated by the Landlord for it and shall use such name only for the business address of the Premises and not for any promotion or other purpose.

The foregoing Rules and Regulations, as from time to time amended, are not necessarily of uniform application, but may be waived in whole or in part in respect of other tenants without affecting their enforceability with respect to the Tenant and the Premises, and may be waived in whole or in part with respect to the Premises without waiving them as to future application to the Premises, and the imposition of Rules and Regulations shall not create or imply an obligation of the Landlord to enforce them or create any liability of the Landlord for their non-enforcement.

SCHEDULE D

Tenant Responsibility Checklist						
Duncan's Bar & Bistro Ltd.		Provided by the City, Cost borne by the City	Provided by the City, Cost borne by the Tenant	Provided by the Tenant, Cost borne by the City	Provided by the Tenant, cost borne by the tenant	Does not apply
Boiler operating permits					x	
Electrical field safety representative					x	
Electrical operating permit					x	
Electrical system preventative maintenance					x	
Electrical system repairs		x				
Electrical/lights - lamp & tube replacement					x	
Elevator equipment repairs (liability limit)		x				
Elevator maintenance contract		x				
Elevator operating permits		x				
Emergency lighting testing & repairs					x	
Exterior doors, windows, facades, etc.					x	
Fire alarm system repairs					x	
Fire alarm system testing & inspection contracts					x	
Fire extinguisher monthly & annual inspections					x	
Fire safety plan and fire drills					x	
Fire sprinkler system repairs		x				
Fire sprinkler system testing and inspection contracts		x				
Furnishings (maintain & replace)					x	
Garbage removal					x	
HVAC preventative maintenance					x	
HVAC repairs					x	
Insurance - automotive					x	
Insurance - liability					x	
Insurance - property, building		x				
Insurance - tenant owned furnishings & fixtures					x	
Insurance - tenant owned operation equipment, computers, & furnishings					x	
Interior walls, flooring, doors, ceilings, etc.					x	
Internet					x	
Janitorial services & supplies					x	
Kitchen Exhaust Hood preventative maintenance						x

Kitchen Exhaust Hood repairs					X
Kitchen Hood Fire suppression system preventative maintenance					X
Kitchen Hood Fire suppression repairs					X
Kitchen Hood Fire suppression testing					X
Landscape maintenance				X	
Licences & permits				X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X				
Pest control				X	
Plumbing system preventative maintenance				X	
Plumbing system repairs				X	
Recycling program				X	
Roof inspection & maintenance	X				
Roof repairs	X				
Security system				X	
Signage				X	
Snow removal				X	
Taxes				X	
Telephone				X	
Tenant improvements				X	
Tenant improvements - Maintenance				X	
Tree removal					X
Utilities - electricity				X	
Utilities - natural gas				X	
Utilities - propane				X	
Utilities - water, sewer				X	
Vandalism (exterior)	X				
Vandalism (interior)				X	
Window Cleaning (exterior)	X				
Window Cleaning (interior)				X	

Appendix "A,B,C,D,E" contains a list of equipment specific to the building in question. The tenant, as per the lease agreement, must provide a detailed maintenance program to the City.

Document Revision History:			
Revision			
1	Description	Revised by	Date

SCHEDULE E



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation
 City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____ Title _____ Company (Insurer or Broker) _____

Signature of Authorized Signatory _____ Date _____

CHAPMAN PARKADE LEASES

TRIPLE NET BUDGET
BASE YEAR 2013

TENANT: DUNCAN'S BISTRO 1,409 sq.ft.

ITEM	\$/SQ. FT.	PER ANNUM
Audit/Review	0.10	140.80
Landscape Maintenance	0.05	70.40
Management Fees	0.60	844.80
Repair & Maintenance	0.39	549.12
Sewer, Water, Garbage, Recycling	0.40	563.20
Snow Removal	0.05	70.40
Supplies	0.05	70.40
Exterior Window Cleaning	0.15	211.20
Electrical	1.39	1,957.12
Insurance	0.18	253.44
Property Taxes	2.66	3,747.94
TOTAL PER ANNUM		8,478.82
TRIPLE NET MONTHLY	6.02	706.57

Report to Council



Date: May 22, 2013
Rim No. 1325-20
To: City Manager
From: Joel Shaw, Capital Assets and Investment Manager
Subject: Corporate GHG Emissions Update

Recommendation:

THAT Council receives, for information, the report from the Capital Assets and Investment Manager dated May 22, 2013 with respect to corporate GHG emissions data and emission reduction projects.

Purpose:

Purpose of report is to present the latest corporate GHG emissions data and highlight GHG emissions reduction projects. The community actions were highlighted in a separate Council report on Feb 12, 2013 (Climate Action Revenue Incentive Program Reporting Requirement).

Background:

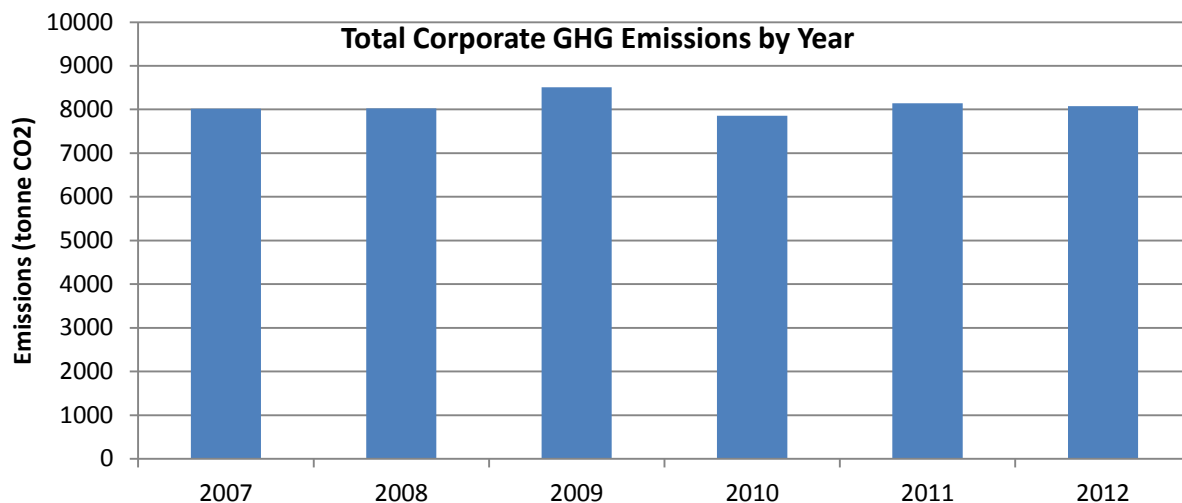
On September 21, 2007 the City of Kelowna signed the BC Climate Action Charter (CAC). By doing so, signatory Local Governments agreed to voluntarily develop strategies and take actions to achieve the following goals:

1. to become carbon neutral with respect to their corporate operations by 2012. The province has since approved 'making progress towards' as part of the common approach to carbon neutrality under the CAC. The City has taken this approach for meeting CAC commitments;
2. measure and report on their GHG emission profile; and
3. create complete, compact and more energy efficient communities.

As an incentive to achieving CAC goals, the province reimburses signatory Local Governments 100% of the carbon taxes paid on energy each year under the Climate Action Revenue Incentive Program (CARIP). In 2012 this payment was \$217,238. The continuation of this payment is connected to the City's compliance with the CAC.

The City tracks energy and emissions data from invoice records from the energy suppliers and this information is uploaded into the City's energy management system. The GHG emissions data for the period from 2007 to 2012 is shown in Figure 1. In 2007, the Corporation's total GHG emissions were estimated at 8,017 tonnes of CO₂ and in 2012 emissions were 8,079 tonnes. This historic comparison indicates that the corporation has maintained GHG emissions at 2007 levels despite the addition of Fleet and Building inventory to support our growing community which has grown by 9% since 2007.

Figure 1



There was a minor correction to the numbers reported last year for the GHG levels in 2010 and 2011. The numbers reported last year were 7,700 and 7,895 for 2010 and 2011, respectively compared to 7,856 and 8,079 for those same years. This correction was a result of missed records during the compilation of historic records by the City and later than expected invoicing by energy suppliers. Moving forward, the City has improved data collection and reporting so that it is more robust and consistent.

The CARIP reporting template (attached) provides corporate GHG emissions levels as required by the CAC and do not include GHG emissions for airport, police or solid waste operations as these services are considered regional services under the CAC.

Listed below are corporate highlights in 2012.

- Implemented Process Optimization and Energy Management Plan at the Wastewater Treatment Facility where electrical usage in 2012 was reduced by 660,000 kWh compared to 2011;
- Received FortisBC PowerSense Conservation Excellence Award for energy savings at the Wastewater Treatment Facility. The award came with a rebate to the City in the amount of \$300,000;
- Installed GPS Fleet Management Systems in City vehicles to reduce idling and improve routing efficiencies;
- Implemented efficiency upgrades to several City facilities including lighting upgrades, condensing boiler for Memorial Arena and high efficiency displacement ventilation/heat recovery HVAC system for the new Parkinson Activity Centre;
- Implemented a corporate bike fleet (11 bikes at 6 City facilities);

- Received Okanagan Basin Water Board grant to partner with UBC to improve management and monitoring of irrigation data systems which will help to conserve water and energy; and
- Implemented a City Hall compost program.

Planned corporate actions in 2013 are detailed in the CARIP reporting template and summarized as follows. CARIP funds will be used for a high efficiency chiller unit at the Rutland Arena. Additional improvements at Rutland Arena include replacing 50 existing 400W Metal Halide lighting with T5 fluorescent fixtures and re-roofing with a white, highly reflective membrane which will serve to reduce the heat load for the refrigeration plant. These measures are estimated to reduce the energy demand by 80,562 Kwh/yr for the arena.

Other projects which include energy reduction initiatives include a new condenser and variable frequency drive (VFD) for Memorial Arena, new VFD and cooling tower for the Art Gallery, Post commissioning at the Rutland Family Y, displacement ventilation system for the new Landfill Admin Building and Building Optimization projects for City Hall and H2O.

Internal Circulation:

Director, Financial Services
Sustainability Coordinator
Manager, Building Services
Fleet Services Supervisor
Acting General Manager, Community Sustainability

Existing Policy:

The Multiple Bottom Line framework pursuant to Council Policy 352: Sustainable Municipal Infrastructure targets climate change initiatives (mitigation and adaptation) including the reduction of GHG emissions. The corporate reduction target established on December 1, 2010, is 22% below 2007 levels by 2017.

Financial/Budgetary Considerations:

The annual CARIP grant will be placed in the Carbon Energy reserve and will be used for projects that will reduce corporate energy and GHG emissions. This reserve will also fund operational expenses, like software licenses, for data collection and reporting. Projects for 2014 will be prioritized based on their business case which will include consideration for environmental and economic benefit.

Personnel Implications:

The data collection, reporting and management of the Corporate GHG Management plan will be completed with existing staff resources.

Considerations not applicable to this report:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Submitted by:

J. Shaw, P.Eng., Manager, Capital Assets and Investments

Approved for inclusion:

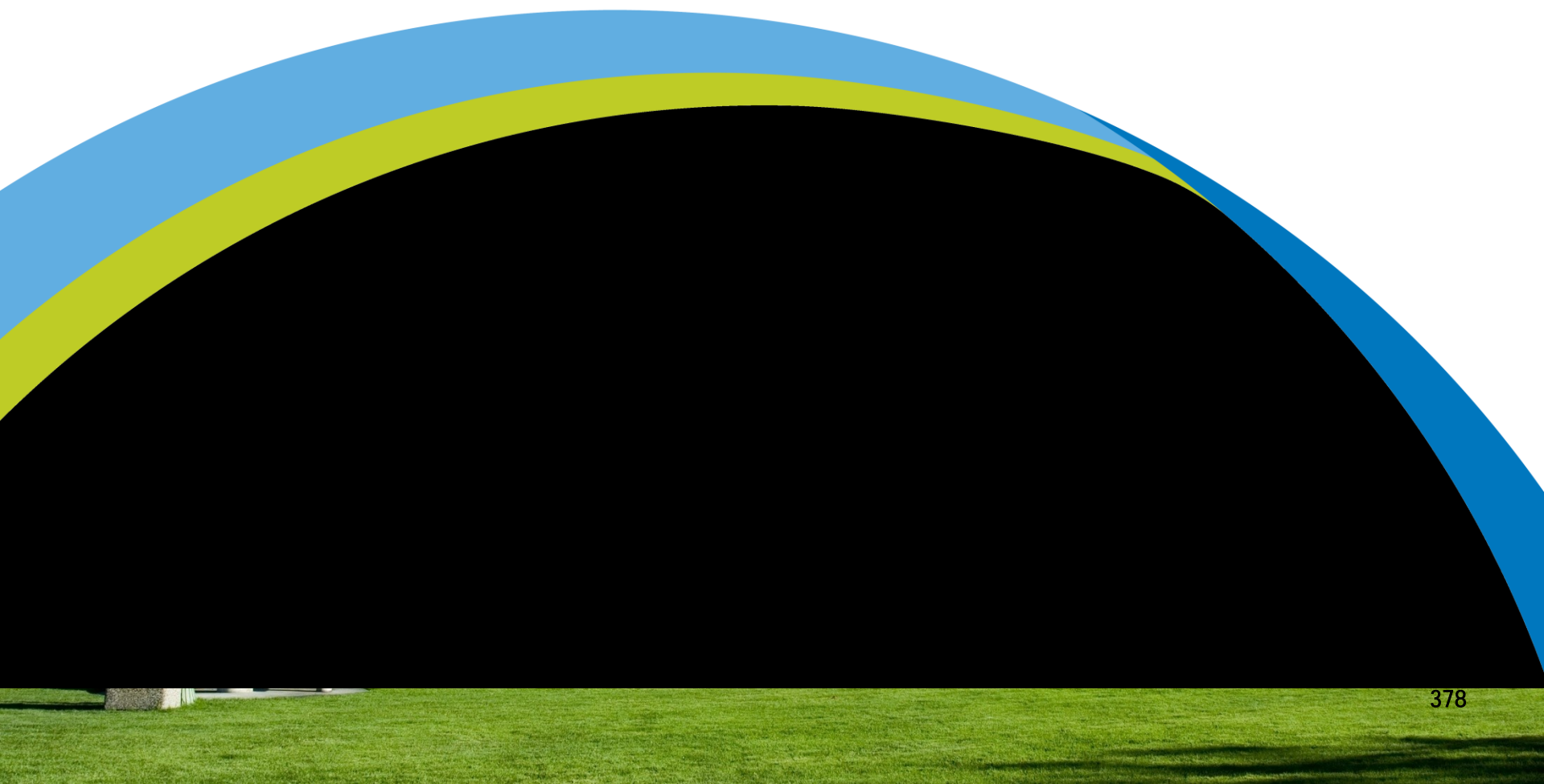


S. Bagh, Acting Director, Infrastructure Planning

Attachment 1: CARIP Template

cc: Director, Financial Services
 Sustainability Coordinator
 Manager, Building Services
 Fleet Services Supervisor
 Acting General Manager, Community Sustainability
 Director, Communications

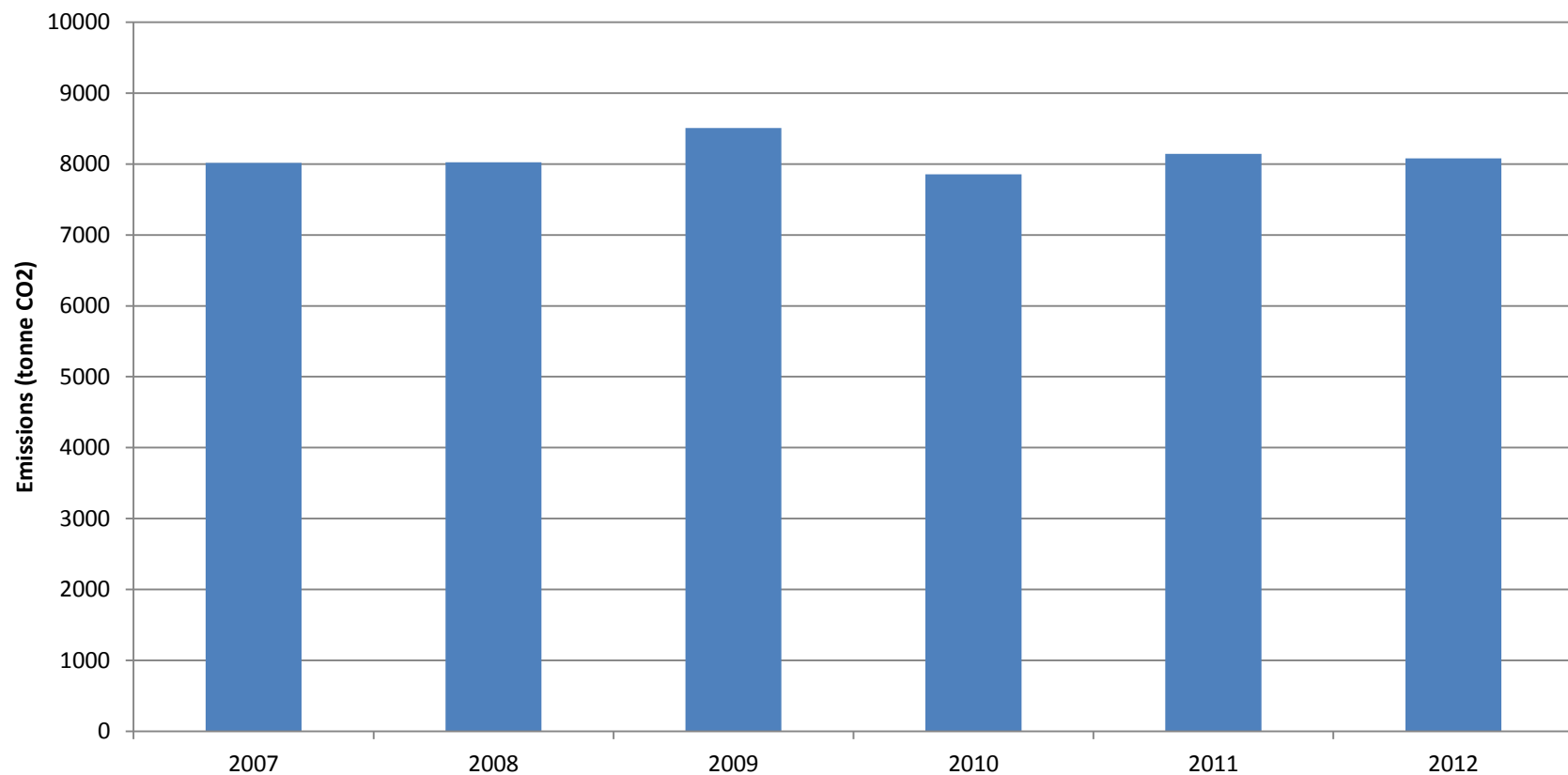
CORPORATE GHG EMISSIONS UPDATE



CLIMATE ACTION CHARTER

- ▶ to become carbon neutral with respect to their corporate operations by 2012. The province has since approved ‘making progress towards’ as part of the common approach to carbon neutrality under the CAC;
- ▶ measure and report on their GHG emission profile; and
- ▶ create complete, compact and more energy efficient communities.

TOTAL CORPORATE GHG EMISSIONS BY YEAR



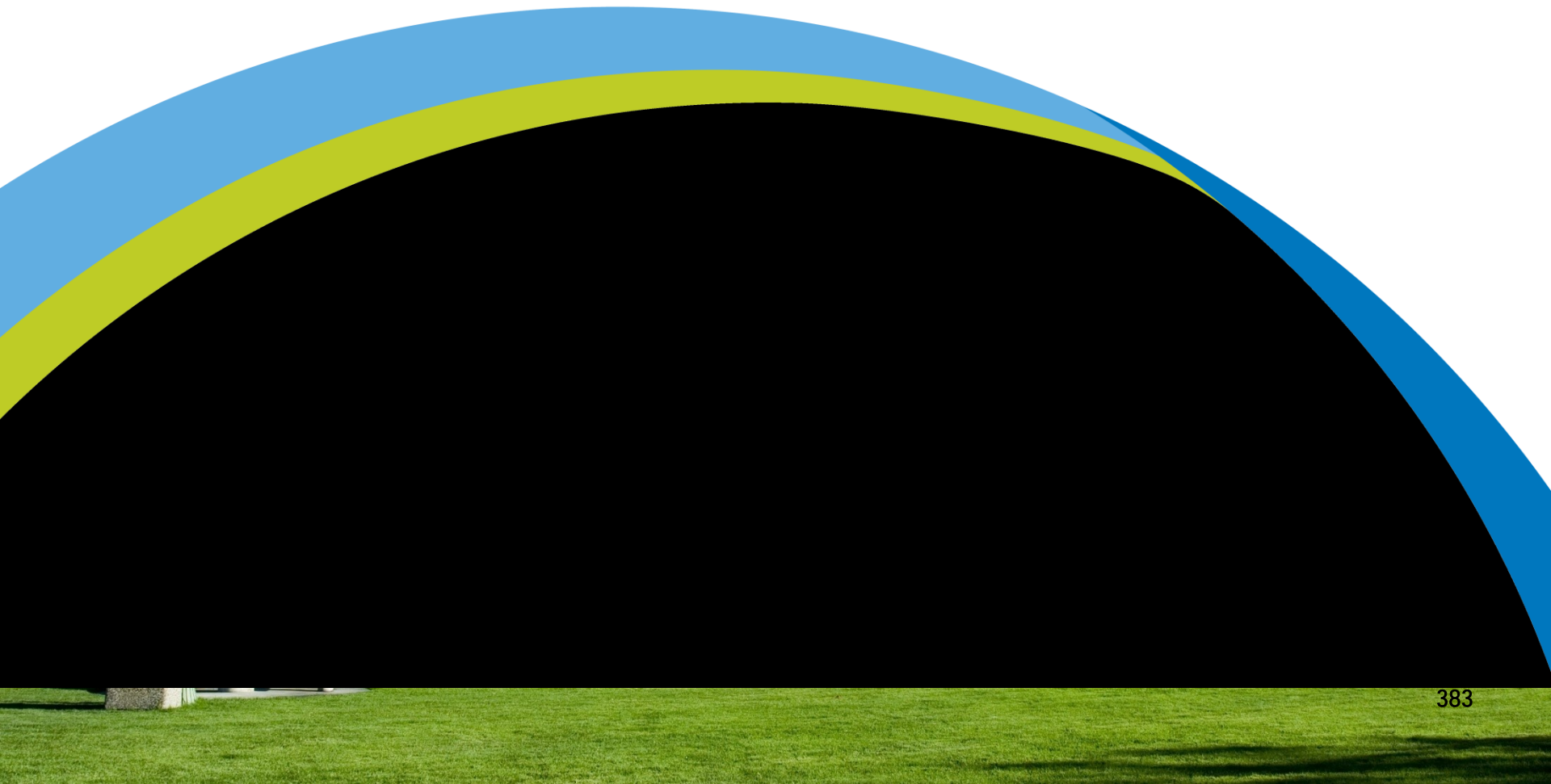
2012 HIGHLIGHTS

- ▶ Implemented Process Optimization at the WWTF where electrical usage in 2012 was reduced by 660,000 kWh compared to 2011;
- ▶ Received FortisBC Power Sense Conservation Excellence Award for energy savings at the WWTF. The award came with a rebate to the City in the amount of \$300,000;
- ▶ Installed GPS Fleet Management Systems in City vehicles to reduce idling and improve routing efficiencies;
- ▶ Implemented efficiency upgrades to several City facilities;
- ▶ Implemented a corporate bike fleet (11 bikes at 6 City facilities);
- ▶ Received Okanagan Basin Water Board grant to partner with UBC to improve management and monitoring of irrigation data systems which will help to conserve water and energy; and

2013 HIGHLIGHTS

- ▶ Install high efficiency chiller at Rutland Arena along with energy efficient lighting and reflective ceiling over ice surface;
- ▶ Building optimization projects at H2O and City Hall;
- ▶ Continue installation of GPS Fleet Management Systems in City vehicles;
- ▶ Implement efficiency upgrades to Memorial Arena and Art Gallery;
- ▶ Post commissioning optimization at Rutland Family Y;
- ▶ Displacement ventilation system for new Landfill Admin Building.

QUESTIONS?



Report to Council



Date: May 14, 2013

File: 0600-10

To: City Manager

From: City Clerk

Subject: BL10848 - Road Closure and Removal of Highway Dedication - A Portion of Road that bisects 2018 Cross Road
Report Prepared by: C. Boback, Legislative Coordinator

Recommendation:

THAT Council provides an opportunity for public input on the proposed road closure for BL10848 - Road Closure and Removal of Highway Dedication - Portion of Road that bisects 2018 Cross Road;

AND THAT Bylaw No. 10848 , being Road Closure and Removal of Highway Dedication - A Portion of Road that bisects 2018 Cross Road be adopted.

Purpose:

To consider adoption of Bylaw No. 10848 being Road Closure and Removal of Highway Dedication - A Portion of Road that bisects 2018 Cross Road.

Background:

Bylaw No. 10848 received first three readings by Council on Monday, May 13, 2013. A copy of the Bylaw is attached. The following conditions of adoption have been met:

1. Newspaper Advertisements placed in local newspaper on Friday, May 17 and Friday, May 24, 2013 with the Monday, May 27, 2013 adoption date;
2. Posted on Public Notice Board;

Following an opportunity for the public to provide input at the Monday, May 27, 2013 meeting of Council, the bylaw may be considered for adoption. Registration at the Land Titles Office will proceed after the bylaw is adopted.

Submitted by:

S. Fleming, City Clerk

CITY OF KELOWNA

BYLAW NO. 10848

Road Closure and Removal of Highway Dedication Bylaw **(Portion of Cross Road)**

A bylaw pursuant to Section 40 of the Community Charter to authorize the City to permanently close and remove the highway dedication of a portion of highway on Cross Road

NOW THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, hereby enacts as follows:

1. That portion of highway attached as Schedule "A" comprising 0.508 ha shown in bold black as Road to be Closed on Reference Plan EPP30766, prepared by Neil R. Denby, B.C.L.S., is hereby stopped up and closed to traffic and the highway dedication removed.
2. The Mayor and City Clerk of the City of Kelowna are hereby authorized to execute such conveyances, titles, survey plans, forms and other documents on behalf of the said City as may be necessary for the purposes aforesaid.

Read a first, second and third time by the Municipal Council this 13th day of May, 2013.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Schedule "A"

