

**LICENCE AGREEMENT
BASTION SQUARE PUBLIC MARKET**

This Agreement is made effective as of January 1, 2018.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

1 Centennial Square
Victoria, British Columbia V8W 1P6

(the "City")

AND:

BASTION SQUARE REVITALIZATION ASSOCIATION SOCIETY (#538415)

Box 8106 Stn Central
Victoria, British Columbia V8W 3R8

(the "BSRA")

WHEREAS:

- A. The BSRA wishes to operate an outdoor public market in the Square Thursdays through Sundays from April 1 to October 15 each year from 2018 to and including 2020 as more particularly set out in this Agreement;
- B. The City believes that the operating of the outdoor public market benefits the community culturally, artistically and commercially;
- C. The City understands that net proceeds from the operation of the Market will be held by the City in a Fund and will be used for legacy improvements to the Square as specified in the Bastion Square Public Market Fund Agreement between the City and BSRA dated May 1, 2012; and
- D. The BSRA will be responsible for selecting Vendors and ensuring that they are treated fairly.

NOW THIS AGREEMENT WITNESSES that in consideration of the promises exchanged herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement,

- (a) **"Board"** means the board of directors of the BSRA;

- (b) **“Langley Street”** means that part of Langley Street shown cross-hatched in the attached Schedule A;
- (c) **“Square”** means the public area known as Bastion Square, lying between Wharf and Government Streets as shown in attached Schedule A, EXCEPT for sidewalk cafes, planters or other occupied areas, and for the purposes of this Agreement shall include Langley Street;
- (d) **“Operations Manager”** means the person designated by the BSRA to administrate the operation of the Market and support the activities of the society;
- (e) **“Market”** means the “Bastion Square Public Market” outdoor public arts and crafts displays, local food products and services authorized under Section 2;
- (f) **“Vendors”** means individuals who are authorized by the BSRA to use or occupy a space, table, or booth outdoors on the Square for the purpose of selling goods or services or providing entertainment as part of the Market;
- (g) **“City”** means the Corporation of the City of Victoria and/or its staff who are authorized to represent the City in the transactions referred to in the sections below; and
- (h) **“Fund”** means the fund created pursuant to the Bastion Square Public Market Fund Agreement between the City and BSRA dated May 1, 2012.

2.0 GRANT OF LICENCE

- 2.1 The City grants a licence to the BSRA and the Vendors to use the Square for the purposes of operating an outdoor public arts and crafts market only in accordance with this Agreement.
- 2.2 The term of the licence is three years and it expires on December 31, 2020 unless terminated earlier pursuant to Section 12.
- 2.3 The BSRA and the Vendors have no claim to the Square or any interest in it other than as expressly permitted under this Agreement.
- 2.4 For the purposes of operating the Market, the BSRA may allow the Vendors to:
 - (a) erect temporary outdoor display stands, coverings, screens, and other related equipment in the Square;
 - (b) sell juried services, food/food products and arts and crafts which, generally, are produced locally by the vendors;
 - (c) present performing arts entertainment to market patrons; and/or
 - (d) on Sundays only, sell imported arts, crafts and clothing.

- 2.5 The BSRA will provide to the City the name of and contact information for the Operations Manager and will provide to the City updated information immediately upon a change in the Operations Manager.

3.0 BOARD

- 3.1 The majority of members of the Board will consist of business or property owners/managers associated with properties adjacent to the Square.
- 3.2 Minutes of BSRA Board meetings will be sent to the City within ten days following such meetings.

4.0 VENDORS

- 4.1 The BSRA, through its Operations Manager, will establish guidelines for Vendor selection process that is fair and transparent, and will select Vendors to participate in the Market in accordance with those guidelines.
- 4.2 A designated Board member(s) and the Society's Operations Manager will meet with Vendors prior to, during and following each market season during the term. Any issues raised by the Vendors will be reported to the Board for consideration and action, if necessary.
- 4.3 The BSRA will ensure that the Operations Manager is fair and respectful of Vendors' interests and issues and will maintain written and clearly defined procedures to ensure Vendors' concerns are considered and addressed in a timely manner. The BSRA will, upon receiving a request from the City, provide to the City the BSRA's procedure for handling Vendors' concerns and issues.
- 4.4 The BSRA will ensure that the type and mix of Vendors:
- (a) are consistent with the goals of the Market;
 - (b) include Vendors that sell locally produced goods and/or services;
 - (c) on Sundays only, may include Vendors that sell imported arts, crafts and clothing; and
 - (d) emphasize product quality and uniqueness.
- 4.5 The BSRA, through its Operations Manager, will ensure that Vendors who are reasonably perceived by adjacent business(es) to be competing with them are excluded from the Market or located a mutually acceptable distance from the adjacent business(es).
- 4.6 The BSRA will obtain and exhibit health, fire and any other applicable authorities' approvals at each of the Market's vending stalls where those approvals are required.

5.0 FINANCE AND ADMINISTRATION

- 5.1 The BSRA will obtain a business licence from the City at the beginning of April of each year the Market operates, and will maintain the said business licence in good standing throughout the Market's season of operation.
- 5.2 The BSRA will pay to the City an annual fee of \$3,000 per year for each year of this Agreement, payable by November 1st each year.
- 5.3 Costs for City services required for the support of the Market will be funded through the annual fee; any exceptions are at the discretion of the City.
- 5.4 The BSRA must submit a revolving three year Market business plan to the City each year to the satisfaction of the Director of Finance, including the identification of all market goals and the strategies and measurable outcomes for achieving them.
- 5.5 By February 21 of each year, with reference to the previous year, the BSRA will submit to the City:
 - (a) a report on the success of the Market in achieving its specific goals and objectives as stated in its business plan;
 - (b) financial statements and budget-to-actual expenses; and
 - (c) net annual proceeds from the Market to be deposited in the Fund.
- 5.6 Members of the Board will meet with City staff in December of each year to review any issues, changes to policy, or other topics for discussion relating to the Market and activities of the BSRA on City property.

6.0 OPERATION

- 6.1 On each day that the Market operates, the BSRA will:
 - (a) maintain the Square in a clean and sanitary condition, free of litter;
 - (b) leave the Square in the same condition that it was before the structures and equipment for the Market were erected;
 - (c) ensure pedestrian walkways and access for emergency vehicles are open;
 - (d) address any hazards posed by Market display, promotional materials or equipment;
 - (e) ensure that access to private properties is unimpeded and requests by business and property owners or their representatives are reasonably addressed;
 - (f) ensure that all materials and equipment used for the Market are not erected earlier than 7:30am nor removed later than 9:00pm, unless agreed to by the City;
 - (g) manage entertainers in the Square, ensuring there is a variety of content and that sound levels remain at a volume acceptable to surrounding businesses or consistent with requirements of the Noise Bylaw; and
 - (h) install parking meter hoods and sleeves on parking meters located on Langley Street and otherwise ensure the closure of Langley Street on Sundays and the Market's use of parking spaces on Langley Street complies with agreed policy and protocol and as directed by the City.

- 6.2 If the BSRA fails to comply with Section 6.1, the City may, in its sole discretion, take any action it deems required to satisfy those clauses, including removing any structure, object or thing from the Square.

Action by the City under Section 6.2 does not relieve BSRA from the obligation to comply with Section 6.1. The BSRA will pay to the City the costs of any action taken by the City under this Section.

7.0 SCHEDULE

- 7.1 Subject to the City's right to terminate this Agreement under Section 12, the BSRA may operate the Market as follows:

- (a) in the Square (but expressly excluding Langley Street), including set-up and tear-down, ONLY between 7:30am and 9:00pm from Thursday to Saturday from April 1 to October 15; and
- (b) in the Square (including, for greater certainty Langley Street), including set-up and tear-down ONLY between 7:30am and 9:00pm on Sundays from April 1 to October 15.

- 7.2 Notwithstanding 7.1 or any other provision in this Agreement to the contrary, the BSRA agrees to operate the Market in compliance with the Outdoor Market Bylaw No. 93-121, including without limitation section 3 of the Outdoor Market Bylaw No. 93-121.

- 7.3 A written request to the City is required for any festival or special event sponsored by the BSRA (a) outside the times of operation specified in 7.1, and/or (b) outside the approved operating area, and/or (c) where there may be impacts to adjacent properties or public space beyond those associated with the normal operation of the Market.

- 7.4 Before January 31st of each year, the City may give notice to the BSRA if the City requires use of a portion of the Square for other activities during the normal days of operation of the Market. The City and the BSRA will identify interim alternate locations for Vendors in the vicinity of the Square on such days. After March 31st, should the City require the use of a portion of the Square, the BSRA will make reasonable efforts to accommodate this request(s) within the limitations of their contractual obligations to the Vendors.

- 7.5 Notwithstanding any provision in this Agreement to the contrary, it is understood and agreed that the Market will include Langley Street on Sundays only and that this Agreement will be interpreted in a manner consistent with the foregoing.

8.0 INFRASTRUCTURE, SUPPORT AND PRESENTATION

- 8.1 In consultation with the City, the BSRA will determine:

- (a) a design and configuration for the Market, which will enhance its character and presence;

- (b) a seasonal signage plan to ensure effective promotion of the Market;
 - (c) operational support requirements (e.g. power, water) to be funded through the annual market fee; and
 - (d) any other infrastructure improvement options and means for their procurement.
- 8.2 The BSRA will prepare and maintain a Market layout map indicating Vendor locations and any other activities associated with the Market and its operation.

9.0 INSURANCE AND LIABILITY

- 9.1 The BSRA will maintain public liability insurance in an amount of at least \$5 million per occurrence in respect of personal injury (including death resulting therefrom) or property damage that may arise from the use of the Square by the BSRA and the Vendors for operating the Market and will include the City as an additional insured in respect of that policy of insurance. The BSRA will provide the City with a corresponding certificate of insurance within 30 days of the execution of this Agreement.
- 9.2 The BSRA will ensure that any Vendor not covered by the public liability insurance referred to in Section 9.1 will maintain their own public liability insurance.
- 9.3 It shall be the sole responsibility of the BSRA to determine what additional insurance coverage, if any, including but not limited to Worker's Compensation Insurance, is necessary and advisable for its own protection and/or to fulfill its obligations under this Licence. Any such additional insurance shall be maintained and provided at the sole expense of the BSRA.
- 9.4 The BSRA will indemnify and save harmless the City, its officers, employees, elected officials, agents, contractors, and representatives from and against any and all actions, claims, damages, losses, costs, and expenses or liability whatsoever, arising wholly or in part, and whether directly or indirectly, from or because of
- (a) anything done or omitted to be done by the BSRA or a Vendor in relation to the use of the Square by the BSRA and the Vendors for operating the Market; or
 - (b) the breach, violation, or non-performance of this Agreement by the BSRA or a Vendor.

10.0 ASSIGNMENT

- 10.1 The BSRA will ensure that it and the Vendors do not transfer or assign the licence granted under section 2 without first obtaining the City's written consent, which consent may be withheld in the City's sole and absolute discretion.

11.0 NOTICE

- 11.1 For the purposes of this Agreement, notice is sufficiently given by one party to the other if the notice is written, is personally delivered or mailed with prepaid postage and is addressed to:
- (a) BSRA at Box 8106 Stn Central, Victoria, B.C. V8W 3R8; and

(b) City Clerk, City of Victoria #1 Centennial Square, Victoria, B.C. V8W 1P6.

12.0 SUSPENSION AND TERMINATION

- 12.1 Where the City requires access to the Square for the purpose of constructing, maintaining or repairing any road, sidewalks, pavement, utility, conduits, sanitary sewer, manholes, water mains or other municipal infrastructure, the City may upon thirty (30) days' written notice to the BSRA, require that the BSRA and the Vendors either suspend the Market or operate the Market at an alternative location as directed by the City and over such period of time as the City indicates is necessary to undertake the public works.
- 12.2 In the event of relocation under section 12.1, the City shall not be responsible for any loss, costs or damages incurred by the BSRA or the Vendors as a result of such suspension or relocation.
- 12.3 In the event of an emergency that renders the provision of notice to BSRA or the Vendors impractical, the City may suspend the Agreement without notice.
- 12.4 The City may terminate this Agreement:
- (a) if the BSRA fails to comply with a provision of this Agreement and any such default is not cured within five (5) days of written notice by the City to do so (provided, however, if such default cannot reasonably be so cured in that time, then such additional time as may be reasonably necessary with the BSRA acting diligently to cure such default forthwith); or
 - (b) any time between September 1st and December 31st in each year of the term for any reason in the City's sole and absolute discretion, provided any such termination will not be effective until then end of Market season operating in the year notice of termination is provided pursuant to this section 12.4(b).
- 12.5 The BSRA may terminate this agreement:
- (a) by giving six (6) weeks written notice to the City, if for unforeseen circumstances it can no longer operate the Market; or
 - (b) any time between September 1st and December 31st in each year of the term for any reason that it no longer wishes to operate the Market.
- 12.6 The City may require relocation of the Market after the end of September in any calendar year and with respect to the following market season, if that is recommended by the Director of Engineering and Public Works.
- 12.7 In the event of suspension or termination of this Agreement by the City pursuant to section 12.1-12.06, the City shall not be liable for any loss, costs, damages or

expenses incurred or suffered by the BSRA or the Vendors as a result of that suspension or termination.

13.0 NO FETTERING OF DISCRETION

- 13.1 Nothing contained or implied within this Agreement shall prejudice or affect the duties, rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Square, the Market, the BSRA, or the Vendors, as if this Agreement had not been signed by the parties.

To confirm this Agreement, the City and Bastion Square Revitalization Association have executed it below to be effective as of the date and year first above written.

**The Corporation of the City of
Victoria** by its authorized signatories:

Mayor

City Clerk

**Bastion Square Revitalization
Association Society** by its authorized
signatories:

Authorized Signatory

Authorized Signatory

Schedule A. Operating Area for Bastion Square Public Market

