

VEHICLES FOR HIRE BYLAW, AMENDMENT BYLAW (NO. 24)

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to amend the *Vehicles for Hire Bylaw* to add more sightseeing vehicle parking stands and delegate to the Director of Engineering and Public Works the authority to allocate parking stands based on a competitive process.

Contents

- 1 Title
- 2 Definition
- 3-6 Amendments
- 7 Commencement

Under its statutory powers, including sections 8 and 36 of the *Community Charter*, the Council of the Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

Title

- 1 This Bylaw may be cited as the “Vehicles for Hire Bylaw, Amendment Bylaw (No. 24)”.

Definition

- 2 In this Bylaw, “**VFH Bylaw**” means Bylaw No. 03-060, the Vehicles for Hire Bylaw.

Amendments

- 3 The VFH Bylaw is amended as follows in the Contents:
 - (a) in the line for section 31, by striking out “agreement and rental fees” and replacing it with “allocation – Delegation”;
 - (b) immediately following the line for section 31, by inserting the following new entry:
 - “32 Termination, amendment, or renewal of motor sightseeing parking stand agreement”;
 - (c) in the line for Schedule E, by inserting “Horsedrawn Vehicle” immediately before “Parking Stand Agreement”; and
 - (d) by inserting the following line immediately after “Schedule E – Parking Stand Agreement”:

“Schedule F – Motor Sightseeing Parking Stand Agreement”.

- 4 The VFH Bylaw is further amended as follows:

- (a) in section 10(5), by inserting immediately after “in accordance with Schedule C” the words “or Schedule D”;
- (b) in section 10(5), by striking out “Column C” and replacing it with “Column 2”;
- (c) in section 10(5), by inserting immediately after “in Schedule C” the words “or Schedule D, as the case may be,”;
- (d) repeal section 10(7) entirely;
- (e) in section 24(4), by striking out “in accordance with this Bylaw” and replacing it with “described in Schedule C”;
- (f) in section 30, by inserting the following new subsection immediately after subsection (3):

“(4) A person allocated a parking stand described in Schedule D must enter into an agreement with the City in the form attached as Schedule F to this Bylaw and pay to the City the rental fee for the stand established by the Director of Engineering pursuant to section 31.”;

- (g) by repealing section 31 entirely and replacing it with the following:

“Motor sightseeing vehicle parking stand allocation - Delegation

- 31 (1) Council delegates to the Director of Engineering the authority to allocate the parking stands identified in Schedule D of this Bylaw and establish the annual fee payable for the stand allocation, in accordance with the conditions set out in this section.
- (2) If a parking stand identified in Schedule D is no longer allocated to a sightseeing vehicle licensee in accordance with section 30(4), the Director of Engineering may
- (a) advertise the availability of any parking stands,
 - (b) invite persons to submit an application for a parking stand in the form established by the Director of Engineering, which form must specify the evaluation criteria prescribed by subsection (3), and
 - (c) allocate parking stands to applicants pursuant to paragraph (b) based on the highest score on the evaluation criteria prescribed in subsection (3).
- (3) The evaluation criteria for parking stand applicants pursuant to this section is as follows:
- (a) 35% - parking stand and sales location optimization, based on service offering and schedule of use;

- (b) 10% - nuisance mitigation measures, based on efforts to minimize noise, nuisance and other impacts on the community and visitors;
 - (c) 30% - proposed monthly rent for the use of the parking stand; and
 - (d) 25% - alignment with City objectives, based on City's accessibility, mobility, tourism, and emissions reduction objectives.
- (4) For certainty, the Director of Engineering is under no obligation to allocate any or all available parking stands identified in Schedule D if
- (a) after conducting the process detailed in subsection (2), in the Director's opinion the City would not derive sufficient benefit from any of the proposals submitted; or
 - (b) it is not in the public interest to assign one or more of the parking stands because of:
 - (i) proposals under consideration that may affect the stands, or
 - (ii) preparation of changes to this Bylaw.
- (5) The Director of Engineering is authorized to execute the agreement in the form of Schedule F if a parking stand allocation has been approved pursuant to this section.”;
- (h) by inserting the following new section 32 immediately after section 31:

“Termination, amendment, or renewal of motor sightseeing parking stand agreement

- 32 Council delegates to the Director of Engineering the authority to exercise on behalf of the City any rights in any agreement related to use or occupation of the parking stands identified in Schedule D, and to enter into new agreements to
- (a) change, add, or remove a sub-licensee,
 - (b) renew or extend the term of the initial agreement, or
 - (c) terminate an initial agreement,
- provided that the conditions of doing so under the initial agreement are satisfied and the form of any new agreement is approved by the City Solicitor.”; and

- (i) by repealing Schedule D entirely and replacing it with the new Schedule D that is attached to this Bylaw as Appendix 1.

5 The VFH Bylaw is further amended as follows in Schedule E:

- (a) the title of Schedule E is amended by inserting “Horsedrawn Vehicle” immediately before “Parking Stand Agreement”; and
- (b) by repealing recital A entirely and replacing it with the following:
 - “A. The City is the owner of a parking stand identified as Parking Stand ___ (the “**Parking Stand**”) in Column 1 of Schedule C to the Vehicles for Hire Bylaw;”
- (c) in recital B, by repealing “[*horsedrawn*]” and replacing it with “horsedrawn”;
- (d) by repealing section 4.0 entirely and replacing it with the following:
 - “**4.0** [intentionally deleted]”;
- (e) in section 6.0, by striking out “set out in the Vehicles for Hire Bylaw” and replacing it with “_____”; and
- (f) in section 11.0(a), by striking out “the Vehicles for Hire Bylaw” and replacing it with “this Agreement”.

6 The VFH Bylaw is further amended by inserting after Schedule E the new Schedule F that is attached to this Bylaw as Appendix 2.

Commencement

7 This Bylaw comes into force on adoption.

| | | |
|------------------------|--------|------|
| READ A FIRST TIME the | day of | 2023 |
| READ A SECOND TIME the | day of | 2023 |
| READ A THIRD TIME the | day of | 2023 |
| ADOPTED on the | day of | 2023 |

CITY CLERK

MAYOR

Appendix 1

Schedule D

Motor Sightseeing Vehicle Parking Stands

| <u>Column 1 – Parking Stand Locations</u> | <u>Column 2 – Sales Locations</u> |
|--|--|
| <p>Parking Stand 1</p> <p>The east side of Government Street, a distance of 21 m measured northerly from a point 64.0 m north of the north property line of Belleville Street</p> | <p>Sales Location 1</p> <p>The east side of Government Street, a distance of 2 m measured northerly from a point 96.1 m north of the north property line of Belleville Street</p> |
| <p>Parking Stand 2</p> <p>The east side of Government Street, a distance of 21.6 m measured northerly from a point 34.8 m north of the north property line of Belleville Street</p> | <p>Sales Location 2</p> <p>The east side of Government Street, a distance of 2 m measured northerly from a point 94.1 m north of the north property line of Belleville Street</p> |
| <p>Parking Stand 3</p> <p>The north side of Belleville Street, a distance of 14 m measured westerly from a point 65.9 m west of the northerly lateral extension of the west property line of Menzies Street</p> | <p>Sales Location 3</p> <p>The north side of Belleville Street, a distance of 2 m measured westerly from a point 97.1 m west of the northerly lateral extension of the west property line of Menzies Street</p> |
| <p>Parking Stand 4</p> <p>The north side of Belleville Street, a distance of 14 m measured westerly from a point 47.9 m west of the northerly lateral extension of the west property line of Menzies Street</p> | <p>Sales Location 4</p> <p>The north side of Belleville Street, a distance of 2 m measured westerly from a point 55.9 m west of the northerly lateral extension of the west property line of Menzies Street</p> |
| <p>Parking Stand 5</p> <p>The east side of Government Street, a distance of 10 m measured northerly from a point 11.1 m north of the north property line of View Street</p> | <p>Sales Location 5</p> <p>The east side of Government Street, a distance of 2 m measured northerly from a point 18.8 m north of the north property line of View Street</p> |
| <p>Parking Stand 6</p> <p>The east side of Government Street, a distance of 12 m measured northerly from a point 26.1 m north of the north property line of View Street</p> | <p>Sales Location 6</p> <p>The east side of Government Street, a distance of 2 m measured northerly from a point 35.8 m north of the north property line of View Street</p> |

NOTE: All Sales Locations must be 0.5m offset from curb

Schedule F

Motor Sightseeing Parking Stand Agreement

THIS AGREEMENT MADE AS OF _____, _____.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

1 Centennial Square Victoria, B.C. V8W 1P6

(the "**City**")

AND:

[NAME OF SIGHTSEEING VEHICLE LICENSEE]

(the "**Licensee**")

- A. The City is the owner of a parking stand (the "**Parking Stand**") identified as Parking Stand ___ on Schedule D of the Vehicles for Hire Bylaw and that part of City sidewalk identified as the corresponding Sales Location for that Parking Stand in Column 2 of Schedule D (the "**Sales Location**");
- B. The Licensee has been issued a sightseeing vehicle licence (as defined in the Vehicles for Hire Bylaw) to load and transport passengers in a sightseeing vehicle;
- C. The City has allocated the Parking Stand and Sales Location to the Licensee for the Licensee's use; and
- D. The City requires the Licensee to enter into this Agreement with the City as a condition of the Licensee using the Parking Stand and Sales Location.

THEREFORE, in consideration of the fee paid by the Licensee to the City and the mutual promises contained in this Agreement, the City and the Licensee covenant and agree with each other as follows:

- 1.0 Right to Occupy** – The City, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement, grants to the Licensee, for the Licensee, its employees, and its invitees, the right to occupy the following during the hours of 8:00am and 6:00pm, unless approval has been obtained in writing from the City's Director of Engineering and Public Works (the "**Director**") for the Licensee to operate beyond those hours:

- (a) The Parking Stand for the purposes of loading or unloading passengers from a licensed sightseeing vehicle and for parking a licensed sightseeing vehicle between daily sightseeing tours, and for no other purpose. For certainty, but without limiting the foregoing, the Licensee shall not park a sightseeing vehicle in a Parking Stand overnight without prior approval.
- (b) The Sales Location for the purpose of setting up a movable podium in accordance with the Vehicles for Hire Bylaw to sell tickets for sightseeing tours, offer to transport passengers in licensed sightseeing vehicles, provide related promotional material, and for no other purposes. For certainty, but without limiting the foregoing, the Licensee shall remove the movable podium and all chattels from the Sales Location overnight.

2.0 Special Events & Improvements – The Licensee accepts and agrees to the following notwithstanding section 1 or any other provision in this Agreement to the contrary:

- (a) The Licensee will not be permitted to occupy the Parking Stand and Sales Location if, in the opinion of the Director in their sole discretion, use of the Parking Stand or Sales Location is required by the City for a special event or the Licensee's use of the Parking Stand or Sales Location is incompatible with a special event occurring in the City. The Director will notify the Licensee, in writing, of the date and times the Parking Stand or Sales Location is required for a special event and the Licensee will not occupy the Parking Stand or the Sales Location on such days and during the times indicated.
- (b) The City may direct the Licensee to temporarily relocate the Parking Stand and Sales Location to permit the City, its agents, employees, contractors and subcontractors, or other entities that possess a permit or other permission granted by the City, to undertake work that, in the sole discretion of the Director, necessitates said relocation, including without restriction capital improvements.
- (c) For any closure or relocation pursuant to paragraph (a) or (b), with the exception of an emergency situation, the City will engage the Licensee at least five business days prior to any closure or temporary relocation anticipated to last longer than 72 hours to establish an alternative Parking Stand and Sales Location.

3.0 Reservation of Rights – The City hereby reserves to itself from the grant and covenants made by it to the Licensee under section 1 above the right for the City, its agents, employees, contractors and subcontractors to have full and complete access to the Parking Stand and Sales Location for any and all purposes.

4.0 Fee – In consideration of the right to occupy the Parking Stand and Sales Location, the Licensee shall pay to the City the rental fee of \$_____ per month (plus GST) from April 1 – October 31, and \$_____ per month (plus GST) for November 1 – March 31 (collectively, the

“**Fee**”), such Fee payable in advance on the 1st day of every month during the Term (as hereinafter defined).

5.0 **Term** – The term of the licence granted under this Agreement is two (2) years, commencing on the ___ day of ____ and ending on the ___ day of ____ (the “**Term**”), unless earlier terminated under this Agreement.

6.0 **Option to Renew**

(a) The Licensee may apply to the Director to renew this Agreement for one (1) period of two (2) years (the “**Renewal Term**”), and the Director may approve a renewal, in their sole discretion, provided that:

- (i) the Licensee has not been in default for failure to pay any amounts hereunder and is not in default under the terms of the Agreement;
- (ii) the Licensee has given the Director written notice of its wish to renew at least three (3) months and not more than six (6) months prior to the expiry of the Term; and
- (iii) the Director has confirmed that the Parking Stand and Sales Location are not required for other City purposes during the Renewal Term.

(b) A renewal agreement pursuant to this section shall be on the same terms and conditions as contained in this Agreement, with the exception of this section 6, which will not be included.

7.0 **Maintenance and Accessibility** – The Licensee accepts and agrees to the following:

- (a) The Licensee will keep the Parking Stand and Sales Location free of any garbage or other refuse and otherwise in a state of cleanliness.
- (b) The Licensee will ensure that a minimum of two (2) metres of clear space on the sidewalk is maintained around the Sales Location at all times, including during periods of passenger embarkation and disembarkation.
- (c) The Director may, at any time during the Term, notify the Licensee that it must take certain steps to mitigate the impact of its operations on the Parking Stand, Sales Location and surrounding area. The Licensee’s use and benefit of the Parking Stand and Sales Location is subject to any requirements provided in these notices and the Licensee will work collaboratively with the City to promptly address any such impact.

8.0 Insurance – The Licensee will maintain insurance as follows:

- (a) Commercial general liability insurance against claims for bodily injury, death or property damage in the amount of not less than five million (\$5,000,000) dollars per single occurrence, naming the City as an additional insured and include a cross liability clause.
- (b) Automobile liability on all owned or leased vehicles in an amount not less than five million (\$5,000,000) dollars.
- (c) Professional liability in an amount not less than two million (\$2,000,000) dollars per claim.
- (d) All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of the City. The Licensee shall provide the City with a certificate of insurance prior to commencement of use of the Parking Stand and Sales Location evidencing all the required insurance.
- (e) All policies of insurance shall contain a clause requiring the insurer not to cancel or change the insurance without giving the City thirty (30) days prior written notice.
- (f) The Proponent shall require and ensure that any Permitted Sublicensee (as hereinafter defined) shall maintain liability insurance comparable to that required above.

9.0 Sub-Licence

- (a) The Licensee may grant a sublicense to share the use of the Parking Stand and Sales Location on the following conditions only:
 - (i) The Licensee sublicenses to no other parties except _____ (the “**Permitted Sublicensee**”), unless an addition or removal of a sub-licensee is approved by the Director in writing, in their sole discretion;
 - (ii) the sublicensee agrees in writing with the Licensee that the use of the Parking Stand and Sales Location by the Permitted Sublicensee is subject to the same terms and conditions as contained within this Agreement except for sections 4.0, 5.0, 6.0, and this section 9.0, and such agreement is provided to the Director; and
 - (iii) all sublicenses must expire on or before the end of the Term and automatically terminate upon termination of this Agreement.
- (b) The Licensee shall be responsible for ensuring that the Permitted Sublicensee observes and performs all the obligations of the Licensee under this Agreement,

which includes communicating all City directions and instructions pursuant to this Agreement to the Permitted Sublicensee, and any breach on the part of the Permitted Sublicensee shall be considered a breach by the Licensee.

- (c) No sublicense shall release or relieve the Licensee from the performance of all of its covenants, obligations and agreements under this Agreement.
- (d) Except as provided within this section, the Licensee shall not assign this Licence in whole or in part, nor sublicense the whole or any part of the Parking Stand or Sales Location, nor share possession thereof with any other person or organization, except with the prior written consent of the Director.
- (e) The Licensee may not collect from the Permitted Sublicensee in any year of the Term a cumulative amount greater than the total Fee for that year of the Term plus 10%, to cover administration costs, for use of the Parking Stand and Sales Location.

10.0 Indemnification – The Licensee releases and will indemnify and save harmless the City, its elected and appointed officials, employees and agents from and against all lawsuits, damages, costs, expenses, fees or liability that the City, the Licensee, a sublicensee, or anyone else may incur, suffer or allege by reason of this Agreement or the use of the Parking Stand or the Sales Location by the Licensee or its sublicensees, or either of their agents, employees, tenants and invitees.

11.0 Termination

- (a) If the Licensee is no longer allocated the Parking Stand under the Vehicles for Hire Bylaw, then without further notice this Agreement shall lapse and be absolutely forfeited.
- (b) If any of the following occurs, and if the default or problem continues for five (5) days after the giving of notice by the City to the Licensee, the City may terminate this Agreement and the rights of the Licensee with respect to the Parking Stand and Sales Location will cease:
 - (i) the Licensee is in default of a payment of any sum payable under this Agreement,
 - (ii) the Licensee is in breach of any provision of the Vehicles for Hire Bylaw or any covenant, condition or agreement in this Agreement,
 - (iii) the Licensee ceases to be sightseeing vehicle licensee as defined in the Vehicles for Hire Bylaw, or
 - (iv) in the opinion of the Director, the Licensee's passengers, passengers'

paraphernalia, vehicle exhaust or other elements related to the Licensee's business activities at the Parking Stand or Sales Location create a nuisance or otherwise impact the public's safety or enjoyment of the road or sidewalk.

12.0 Regulations – The Licensee will comply promptly at its own expense with all provincial, federal and local government statutes, regulations and bylaws applicable to the use of the Parking Stand and Sales Location by the Licensee, including without limitation the Vehicles for Hire Bylaw and the Capital Regional District's Idling Control Bylaw No.3533.

13.0 No Compensation – The Licensee will not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of this Agreement or the application of sections 2 or 3 of this Agreement.

14.0 Initial and Annual Reporting – The Licensee will:

- (a) Prior to the commencement of the Term, submit to the City a plan which describes, to the satisfaction of the Director, how the Licensee will conduct its operations and handle passengers at and around the Parking Stand and Sales Location.
- (b) Prior to the commencement of the Term, submit to the City the following details for each vehicle used at the Parking Stand pursuant to this Agreement:
 - (i) Vehicle Make
 - (ii) Vehicle Model
 - (iii) Model Year
 - (iv) VIN
 - (v) Registration Plate Number
 - (vi) A description of on-board safety features and equipment
 - (vii) Vehicle Capacity
 - (viii) Vehicle Accessibility Features
 - (ix) Confirmation that vehicle meets or exceeds 2010 tailpipe emissions standards established by the US Environmental Protection Agency.
- (c) During the Term, every year, and not later than (90) ninety days prior to the anniversary of the commencement date of the Term, submit to the City an updated plan described in subsection (a), and an updated vehicle roster and the information described in subsection (b) that reflects any modifications in operations, including

modifications made pursuant to all notices provided to the Licensee pursuant to section 7.0(c) in the previous year.

15.0 Miscellaneous

- (a) This Agreement will not be interpreted as granting any interest in the Parking Stand or Sales Location to the Licensee.
- (b) The Licensee expressly agrees that their vehicles and the contents of such vehicles while parked in a Parking Stand, and their movable podium and chattels while in the Sales Location, shall be at the risk of the Licensee.
- (c) The Licensee agrees the Parking Stand may be occupied only by those licensed sightseeing vehicles approved by the City in writing to occupy the Parking Stand.
- (d) Waiver of any default by a party will not be interpreted or deemed to be a waiver of any subsequent default.
- (e) This Agreement will be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (f) Nothing in this Agreement will be construed to create a relationship of partners, joint venturers, fiduciaries or any other similar relationship between the Licensee on the one hand and the City on the other.
- (g) Nothing contained or implied in this Agreement will derogate from the obligations of the Licensee under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, bylaws, orders and regulations, which may be as fully and effectively exercised in relation to the Parking Stand and Sales Location and the Licensee as if this Agreement had not been executed and delivered by the Licensee and the City. For certainty, the City may amend or repeal the Vehicles for Hire Bylaw and the allocation of the Parking Stand and Sales Location and otherwise terminate this Agreement notwithstanding anything contained or implied in this Agreement.
- (h) This Agreement may be executed in counterparts and delivered by emailed PDF file, which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS of its terms, the parties hereto have executed this Agreement.

Signed by **THE CORPORATION OF THE**)
CITY OF VICTORIA on the ___ day of)

_____ by its authorized signatory:)
)
)
)
_____)

Name:)
Director of Engineering and Public Works)

Signed by the **[NAME OF SIGHTSEEING**)
VEHICLE LICENSEE] on the ____ day)
of _____ by its authorized signatories:)
)
)
_____)

Authorized Signatory:)
)
)

_____)
Authorized Signatory:)